

(2025) 12 OHC CK 1913

In the Orissa High Court

Case No : Writ Petition (C) No. No. 28196 Of 2025

Dr. Subrat Jamadar

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 24-12-2025

Acts Referred:

Constitution Of India, 1950 — Article 14, 15, 16, 17, 18, 309, 313, 372
Government Of India Act, 1935 — Section 241(2)(b)

Citation : (2025) 12 OHC CK 1913

Hon'ble Judges : Manash Ranjan Pathak, J;Mruganka Sekhar Sahoo, J

Bench : Division Bench

Advocate : Deepali Mahapatra, Prem Kumar Mohanty

Final Decision : Allowed

Judgement

Mruganka Sekhar Sahoo, J

1. The petitioner in the writ application works as Medical Officer in the cadre of Odisha Medical Health Services under the Government of Odisha. At present he is working as Medical Officer, District Headquarters Hospital, Paralakhemundi, Dist-Gajapati. He has approached this Court challenging the communication made to him by the authority refusing to grant him 'No Objection Certificate' (hereinafter 'NOC' for short) to enable him to participate in the counselling for admission to Diplomate National Board of Examinations (hereinafter 'DNBE' for short) (Post MBBS) in the sponsored category.

2. For the purpose of adjudication of the present writ application it would suffice to indicate that National Board of Examinations in Medical Sciences is an autonomous body under Ministry of Health and Family Welfare Department, Government of India which admits candidates for Post Graduate studies in Medical Sciences described as DNBE from amongst the candidates who have appeared and secured a rank in the National Eligibility-cum-Entrance Test for Post Graduate Courses, in the present case NEET-PG 2025.

3. Notice dated 10.12.2025 has been issued by the National Board of Examinations in Medical Sciences (hereinafter 'NBEMS' for short) "subject-Centralized merit Based Counseling for admission to Sponsored DNB (Post MBBS and Post Diploma) seats – 2025 admission session", copy of which has been filed before this Court.

Paragraphs-3 and 4 of the notification provide the details of procedure i.e. to be followed for participation in Sponsored DNB (Post MBBS) Counseling. Said paragraphs are reproduced herein:

"3. Eligibility Criteria for candidates for participation in Sponsored (Post MBBS) DNB seats counselling:

I. Candidates who are working in a Government (State/Central/Autonomous/ PSUs, etc.) organization on a regular basis are eligible for Sponsored (Post MBBS) DNB seats.

AND

II. Candidates must be in possession of MBBS qualification recognized as per the provisions of the NMC Act, 2019 and permanent registration certificate of MBBS qualification issued by the Medical Council of India/State Medical Council.

AND

III. Must have "Qualified" NEET-PG 2025 and must have completed one year of internship on or before 31st July, 2025.

4. Eligibility Criteria for candidates for participation in Sponsored DNB (Post Diploma) Seats counselling:

I. Candidates who are working in a Government (State/Central/Autonomous/ PSUs, etc.) organization on a regular basis are eligible for Sponsored DNB (Post Diploma) seats.

AND

II. Candidates who have passed the final examination leading to the award of Post Graduate Diploma from Indian Universities which are duly recognized as per provisions of NMC Act 2019 i.e. have passed final examinations for Post graduate diploma qualification on or before 31st January, 2025.

AND

III. Candidate must have "Appeared" in DNB-PDCET 2025"

4. The facts as stated in the writ application and undisputed are that the petitioner, a doctor having MBBS degree joined as Medical Officer on 11.12.2019 in Public Health Center (New) Hadubangi under Kasinagar Block in the district of Gajapati. He having become successful in a recruitment process through the Odisha Public Service Commission was appointed on regular basis w.e.f.

27.03.2020 and joined as Medical Officer, District Headquarters Hospital (DHH), Parlakhemundi, where he continues to serve in the cadre of Odisha Medical Health Services.

5. Earlier petitioner had appeared in the NEET-PG 2024, secured a rank -87721. The NBEMS issued notice dated 18.12.2024 regarding counseling for admission to Sponsored DNB (Post MBBS). He applied to the appropriate authority of the employer-State seeking NOC to participate in the counseling to be conducted by NBEMS. He approached for the NOC through the opposite party no.3-Chief District Medical & Public Health Officer, Gajapati to the Director of Health Services, Odisha (opposite party no.2). The said application for NOC was made by him on 20.12.2024. However, the application yielded no result as no decision was communicated to him granting NOC or otherwise.

6. The petitioner has annexed the counseling list for the year 2024, issued by the NBEMS, New Delhi, marked as Annexure-6 to the writ application. To substantiate his claim, relying on Annexure-6 it is contended that concededly doctors having rank from 66,681 up to 1,75,480 have got selected after participating in the post MBBS DNB counseling for pursuing Post Graduation in different subjects of Super Speciality/Medicine/Surgery.

7. Thus, it is stated in the writ application and argued that the petitioner has suffered discrimination at the hands of the State-authorities as the authorities allowed the regular in-service Medical Officers of OMHS Cadre and Dental Surgeons of OMS (Dental) Cadre selected through NEET PG for admission to All India Quota/State Quota in DNB whereas for no apparent reason he has not been allowed to pursue studies in Post Graduate in Medicine/Surgery by participating in the counseling meant for Sponsored DNB (Post MBBS) Seats conducted by NBEMS after securing rank 87,721 in NEET-PG 2024.

8. It has been brought to our notice by the learned counsel for the petitioner that the relevant rule governing the study leave is contained in Odisha Service Code which is a set of rules those were promulgated and came into force with effect from 01.04.1939 made by the Governor of Odisha under Clause (b) of Sub-section (2) of Section 241 of the Government of India Act, 1935. The code and set of rules has continued in force under Article 313 of the Constitution of India as amended from time to time under the proviso to Article 309 of the Constitution of India. Thereafter, came the notification dated 20.08.1950, which is reproduced herein:

"GOVERNMENT OF ODISHA INSTRUCTION

(F.D. No.11711 Estt. 126/29 F., Dt. 20.08.1950)

Sub : Service Code shall be deemed to be a Code of Rules

In exercise of the powers conferred by Article 309 of the Constitution of India, read with Article 302 thereof and in supersession of the Notification of the Government of Odisha in the Finance Department No.2769-F., dated 1st March,

1950, the Governor of Odisha is pleased to direct that the Odisha Service Code shall be deemed to be a Code of Rules made under Article 309 and xxx."

[Underlined to supply emphasis]

9. The rule 179 of the Odisha Service Code is reproduced herein:

"179. GRANT OF SPECIAL STUDY LEAVE:

(a) Subject to the conditions hereinafter specified; the State Government may grant special study leave to a Government servant to enable him to study scientific, technical or similar problems or to undergo a special course or instruction. Such leave is not debited against the leave account.

(b) These rules relate to study leave only. They are not intended to meet the case of Government servants deputed to other countries at the instance of Government, either for the performance of special duties imposed on them or for the investigation of specific problems: connected with their technical duties. Such cases will be dealt with on their merits under the provisions of Rule 59. Such leave may be granted to a Government servant in the Public Health, Medical, Civil, Veterinary, Agriculture, Education, Public Works or Forest Department or to an other Government servant to whom the State Government is of opinion that such leave should in the public interests, be granted.

NOTE – Save in very exceptional cases, study leave will not be granted to a member of subordinate service."

10. Thereafter, the Government of Odisha, the Finance Department has issued office memorandum dated 29.07.1980 on the subject: Liberalisation of terms for sanction of leave to Government employees for undertaking higher study/training in India and abroad. In the case at hand the subject of study is post-graduation in Medicine/Surgery that is clearly provided in rule 179 (b) as we have noted above. The rule has to be applied uniformly there being no distinction between study of post-graduation in Medicine/Surgery: DNB (Post MBBS) as a sponsored candidate and not as a sponsored candidate.

11. Upon notice being issued by the Court by order dated 23.10.2025, counter has been filed supported by affidavit dated 10.11.2025 filed by the Additional Secretary to Government on behalf of the Government represented through the Principal Secretary, Health and Family Welfare Department; thereafter, the Additional Secretary on behalf of opposite party no.1 has filed affidavit dated 18.11.2025 and another affidavit has been filed on behalf of the opposite party no.1 supported by affidavit dated 09.12.2025. Another additional affidavit has been filed supported by affidavit dated 12.12.2025.

12. The learned Additional Standing Counsel in response to the writ petition has based his submissions on the averments made on behalf of opposite party no.1 in counter and additional affidavits. The opposite party-State relies on the notification dated 02.09.2022 (Annexure-A/1 to the counter affidavit) i.e.

proceedings of the meeting of a Committee held on 02.09.2022 under the Chairmanship of Special Secretary to Government, Health and Family Welfare Department having six other members such as Director, Medical Education & Training, Odisha, Director, Health Services, Additional Secretary to Government, Health and Family Welfare Department, two Additional Directors, Medical Education & Training, Odisha and Deputy Secretary to Government, Health and Family Welfare Department. For convenience of reference, paragraphs-1 to 5 of the proceedings of the meeting of the Committee dated 02.09.2022 are reproduced herein:

"1.NOC will be issued to the Medical Officers of OMHS cadre to pursue PG course/ DNB/Super Specialisation through National Eligibility test like NEET/INI CET.

2. NOC will be issued to the Medical Officers of OMHS cadre to pursue SR ship/ Tutor ship in the State Government Medical Colleges and AIIMS, Bhubaneswar, so that the people of the State get their services.

3.NOC will not be issued to the doctors under Post PG bond conditions to pursue SR ship/Tutor ship/Fellowship in other institutions both inside and outside State except for AIIMS, Bhubaneswar till completion of their bond services.

4. NOC will be issued to the Medical Officers of OMHS cadre to pursue Fellowship in the MCI NMC approved subjects in the MCI NMC recognized/permitted institutions situated within & outside the State. The maximum duration of such fellowship will be two years and the period of fellowship will count towards service benefits.

5. NOC will not be issued to the Medical Officers of OMHS cadre for the sponsored DNB course."

13. After filing of the counter, since the learned ASC laid much emphasis on paragraph-7 of the counter affidavit, after hearing him, by order dated 18.11.2025, we had passed the following order:

"2. The learned Additional Standing Counsel justifying the action of the authorities, brings to our notice sub-para-7 of the counter affidavit, which reads thus:-

"It is settled provision that Government is not sponsoring any candidate for pursuing DNB or any other courses. It is further submitted that mere completion of 5 years of regular service does not confer an automatic right upon a Government doctor for grant of study leave/issuance of NOC. The grant of NOC is subject to administrative convenience, the availability of Medical officers and other service conditions. Therefore, the petitioner cannot claim NOC as a matter of right and the rejection/ non-issuance of NOC cannot be construed as arbitrary/ discriminatory. Hence, the averments made by the petitioner in the writ petition are false, baseless and denied."

3. Such being the stand, we have asked pointedly to learned Additional Standing

Counsel "who has settled, which is the settled provision and why it is not mentioned in the counter affidavit?". The learned Additional Standing Counsel has adjournment to obtain instruction."

14. Learned counsel for the State relies on the document filed marked as Annexure-C/1 to the additional affidavit on behalf of opposite party no.1 dated 18.11.2025, to submit that two doctors working as Medical Officers in the OMHS cadre who had applied for NOC were not granted such NOC. He relies on paragraph-6, 7, 8 and 9 of the affidavit dated 09.12.2025 on behalf of the opposite parties which are reproduced herein:

"6. That as per point No.1 of the committee meeting proceeding dated 02.09.2022, NOC will be issued to Medical Officers of OMHS cadre for pursuing higher study through NEET/INI-CET. As such all Medical Officers including the petitioner are allowed to pursue higher study and the petitioner's interest to pursue higher education is no way restricted by Government.

7. That as per point No.5 of the said proceeding, it was decided by the intra-departmental Committee not to grant NOC for sponsored DNB Courses. Sponsored DNB Courses seats are reserved for Central Government/State Government Doctors with the condition that National Board of Examinations in Medical Sciences(NBEMS) will not pay monthly stipend and the concerned Government should furnish undertaking to provide monthly salary to them. Previously salary was not made available to the Medical Officers during PG/SS Courses. However, after approval by the Finance Department vide their O.M. No.10235 dated 31.03.2023, State Government is presently providing salary to OMHS Cadre Officers pursuing PG/SS courses.

8. That providing salary to OMHS Cadre during study leave may change any time as per policy requirements of the Government. As such, Department furnishing an undertaking to pay salary during study leave period may attract future legal complications.

9. That Government usually sponsors Officers for higher study as per requirement of Government but not as per requirement of Officer concerned. Further, steps are being taken to re- examine the principle of the proceedings in the intra-departmental committee of this Department."

15. He further relies on paragraphs-6, 7 and 8 of the additional affidavit dated 12.12.2025, which are reproduced herein:

"6. That Government of Odisha has already allowed 1459 number of Medical Officers of OMHS Cadre for pursuing PG/DNB course with provision of leave salary during the period of their study. The voids created thus in the periphery hospitals creates large scale resentment amongst the public. However, this is being allowed keeping in view the need to upskill the doctors and to eventually provide specialist services to the public. Besides, many Medical Officers are being allowed to pursue Fellowship and Senior Residency, which further worsens the

dearth of doctors in the periphery hospitals.

7. That on verification of records, it is found that no candidate has been issued with NOC to pursue sponsored DNB courses since the date of Proceedings of Committee meeting dated 02.09.2022. Issue of NOC in favour of the petitioner may open up another set of Medical Officers to apply for Sponsored DNB courses with generation of more stress on the healthcare systems.

8. That 1459 Medical Officers who are pursuing PG/DNB courses are selected for the courses through NEET PG counselling conducted by Medical Counselling Committee (MCC) under Directorate of Health Services, Government of India and PG (Medical) Counselling & admission Committee under State Government based on their NEET PG rank during last three years. If the petitioner is selected for DNB courses through this process, the Department shall relieve him to pursue the higher studies with the leave salary.”

16. The further contentions of the learned ASC in opposition to the prayer made in the writ application are that in view of the decision dated 02.09.2022, the application of the petitioner dated 20.12.2024 seeking NOC to do PG, by participating in the counseling for Sponsored DNB (Post MBBS) seats was rejected vide Health and Family Welfare Department, Odisha letter No.1971 dated 20.01.2025. The conditions for grant of NOC by the State, whenever it is granted to any doctor working in the OMHS cadre have been enumerated in paragraph-7 at page-6 of the counter and are reproduced herein:

“I. The Medical Officer under OMHS cadre will pursue the course as per the stipulations mentioned in the Finance Department O.M. No.10235 dated 31.03.2023 and this Department letter No.468 dated 06.01.2024.

II. The Dental Surgeon will pursue the course at his/her own cost availing leave due and as admissible to him/her.

III. The Medical Officer/Dental Surgeon will give an undertaking (in shape of an affidavit) to the DHS, Odisha through the concerned authority to the effect that he/she will join in this Department soon after completion of the course failing which Disciplinary Proceedings shall be drawn against him/her.

IV. The Medical Officer/Dental Surgeon who is continuing under Post P.G. Bond agreement will submit a declaration (in form of an affidavit before the JMFC as per the format enclosed in Appendix-I of this Deptt. Resolution No.32988, dtd. 09.12.2021) before the concerned Dean & Principal of Medical College who will relieve him/her for higher study and send copy of such certificates to DHS and DMET, Odisha.”

17. The fulcrum of the argument of the State for not granting NOC is ‘paragraph-5 of the proceeding’ reproduced above. It is stated that in view of the said decision, as a policy, State is not granting NOC to Medical Officers of OMHS cadre like those of the petitioner to participate in counseling for pursuing PG as Sponsored DNB (Post MBBS) course.

18. It is not the case of the petitioner that he does not want to abide by any of the conditions (as indicated above) which will be imposed as is the requirement of the employer-State. Rather it is stated and asserted before this Court by the learned counsel for the petitioner that the petitioner shall abide by all the conditions those are imposed on doctors working in OMHS cadre who are granted NOC to participate in counselling to prosecute PG in Medicine/Surgery/other subjects.

19. In response though affidavits have been filed on behalf of opposite parties, the issue raised during the deliberations before the Court remains unanswered.

The decision of the committee dated 02.09.2022 has been elevated by the State in it's contention before the Court to a level so sacrosanct that, it is argued : the decision of the committee though apparently discriminatory as it makes distinction between a doctor employed in the OMHS cadre who wishes to study PG, DNBE (Post MBBS) not as a sponsored candidate and another doctor in the OMHS cadre who wants to study DNBE(Post MBBS) as a sponsored candidate, both having joined the service under similar terms and conditions governed by self-same rules and service conditions can be treated differentially when State considers their application to grant NOC to participate in counselling for PG study as an in service candidate.

20. On a plain reading of the instruction issued by NBEMS it is apparent that only difference is that the doctor as specified in paragraph-1of the resolution dated 02.09.2022 does not bear the cost/tuition fee for the studies for acquiring the degree of DNBE whereas a doctor in the sponsored category has to bear the cost himself.

21. A feeble attempt has been made by the learned ASC to submit that the institutions imparting Post Graduate studies are private hospitals. We find Annexure-6 to the writ petition i.e. issued by the NBEMS gives allotment details of Sponsored Post MBBS DNB Counseling 2024: at Sl. No.3 Hindu Rao Hospital, Subzi Mandi, Malkaganj, Delhi-110007, which is a hospital under the State Government of Delhi/Municipal Corporation of Delhi providing P.G. in General Medicine; similarly at Sl. No.4 of the list Dr. Babasaheb Ambedkar Central Railway Hospital, Byculla, Mumbai-27, Maharashtra, a hospital of Indian Railway, imparting studies for MD in General Medicine. At Sl. No.7 is PG in Anaesthesiology again at Hindu Rao Hospital, Subzi Mandi, Malkaganj, Delhi-110007. At Sl. No.11 is Diamond Harbour Government Medical College and Hospital, Harindanga, Newtown, Ward no.-04, PO and PS- Diamond Harbour, Dist – south 24 praganas West Bengal imparting MD in General Medicine. Accepting for sake of argument the contention of State, such argument has to be rejected as having no relevance, as State cannot differentiate its employees who wish to take PG study by distinguishing PG study in medical science to be prosecuted in premier hospitals may be in the private sector those are imparting Post Graduate Degree in Medical Sciences such as DNBE at Government hospitals and Post Graduate in Medical Sciences imparted at Government Hospitals. No such

distinction can be made as far as the degree DNB (Post MBBS) is concerned.

22. Having heard the learned ASC and having gone through the reasons stated in the above paragraphs in the counter our conclusion upon judicial review is that no sufficient grounds have been stated, reasons disclosed in the counter to indicate that there is any intelligible differentia between the doctors in the OMHS cadre who opt to study DNBE (Post MBBS) in sponsored category and the doctors who opt to study the DNBE (Post MBBS) not in the sponsored category.

23. The disclosures made in the four affidavits filed by the opposite parties miserably fail to bring on record any intelligible differentia to the notice of the Court for the authorities to act and to discriminate as far as grant of NOC for studying PG is concerned.

24. Regarding imposition of conditions as imposed by the State for grant of NOC during the period when the doctor is prosecuting Post Graduate studies regarding his salary and other conditions, as we have discussed above, we do not have to delve into the said aspect inasmuch as the said aspect is not an issue before us to be considered in the present proceeding.

25. We appreciate the statement made in paragraph-9 of the affidavit dated 09.12.2025 and we reproduce the same.

"9. ... Further, steps are being taken to re-examine the principle of the proceedings in the intra-departmental committee of this Departments."

26. Learned counsel for the petitioner to support her submissions relied on decision of the Hon'ble Supreme Court rendered in Dr. Tanvi Behl v. Shrey Goel & others:2025 INSC 125, particularly paragraphs-14, 15, 17, 30, which are reproduced herein:

"14. The difference in the logic in making reservations on the basis of residence in UG level or MBBS level, and PG level (i.e. MD or MS) was explained in Jagadish Saran as well as Pradeep Jain. It was held that at PG level merit cannot be compromised, although residence-based reservation can be permissible to a certain degree in UG or MBBS course. While coming down heavily on residence-based reservation in PG medical courses, it referred to the opinion of the Medical Education Review Committee [relied upon in Saurabh Chaudri (SCC p. 168, para 48)], which are as follows:- (SCC p. 690, para 22)

"22. ... 'all admissions to the postgraduate courses in any institution should be open to candidates on an all-India basis and there should be no restriction regarding domicile in the State/Union Territory in which the institution is located'."

15. Why residence-based reservation is impermissible is for the reason that such reservation runs counter to the idea of citizenship and equality under the Constitution. It was said as under in Pradeep Jain :- (SCC p. 672, para 10)

"10. ... Now, the primary imperative of Article 14 is equal opportunity for all across the nation for education and advancement and, as pointed out by Krishna

Iyer, J. in Jagdish Saran (Dr) v. Union of India [(1980)2 SCC 768 : AIR 1980 SC 820] 'this has burning relevance to our times when the country is gradually being "broken up into fragments by narrow domestic walls" by surrender to narrow parochial loyalties'. What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality. Anyone anywhere, humble or high, agrestic or urban, man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, speciality or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State. A, which ordinarily in the commonality of cases, would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. It is axiomatic that talent is not the monopoly of the residents of any particular State; it is more or less evenly distributed and given proper opportunity and environment, everyone has a prospect of rising to the peak. What is necessary is equality of opportunity and that cannot be made dependent upon where a citizen resides."

The above passage from Pradeep Jain was relied upon in Saurabh Chaudri (SCC p. 166, para 46), while coming to the same conclusion.

17. Article 14 of the Constitution of India speaks of Right to equality and declares that "the State shall not deny to any person equality before the law or the equal protection of law within the territory of India". Other Articles such as Article 15, 16, 17 and 18 are only different facets of Right to equality.

30. It was reiterated further SCC p. 785 para 39)

"39. If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunned. The role of high grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise. In science and technology and other specialized fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-

shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless."

These findings in Jagadish Saran have been approved and followed in Saurabh Chaudri (SCC p. 168 para 48)."

[Underlined to supply emphasis]

27. The learned Additional Standing Counsel has to support the submissions of the State has relied on the decision of the Hon'ble Apex Court P.U. Joshi & others v. The Accountant General, Ahmedabad and others; AIR 2003 SC 2156; 2003 (2) SCC 632.

The relied upon paragraph of the said decision (Indian Kanoon print, page-5) is reproduced herein:

"We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotions or impose itself by substituting its views for that of the State."

28. The learned Additional Standing Counsel has also relied upon the decision rendered by the Hon'ble Apex Court in Association of Medical Superspeciality Aspirants and Residents and others v. Union of India and others; (2019) 8 SCC 607. The said decision has not dealt with issue raised in the present writ petition.

29. Further, the learned Additional Standing Counsel relies upon the decision of the Central Administrative Tribunal, Principal Bench, New Delhi dated 11.01.2018 in O.A. No.2868 of 2017 (Babita Sahoo v. All India Institute of Medical Science and others). The relied upon paragraph-22 of the said decision (Indian Kanoon print, page-7) is reproduced herein:

"22. Though the scheme of granting study leave has been provided by the Government to enable the employees to improve their academic acumen, but it is the prerogative of the employee institute to lay down the parameters within which the employee must pursue his or her higher studies so that the knowledge acquired by the employee can be used as an asset by the respondent organization."

30. Perusal of the judgment in P.U. Joshi (supra) and particularly the relied upon

paragraph goes to show that the reliance upon the said judgment is of no avail as the State after formulating a policy to grant NOC to doctors willing to do Post-graduation has discriminated the doctors working in OMHS cadre who are applying for DNB and the doctors who want to prosecute their post graduate degree by opting for sponsored DNB. No intelligible differentia has been shown for manifest differential treatment of doctors in one service cadre on the basis of they opting for the DNB in sponsored category.

31. Further there is no reasonable answer to the issue that paragraphs 1 and 5 of the decision of the committee dated 02.09.2022 relied upon by the State, are contradictory to each other to the extent paragraph-1 provides for granting NOC to the Medical Officers of OMHS cadre to pursue DNB course through National Eligibility Test like NEET/INI CET whereas paragraph-5 of the proceeding provides NOC will not be issued to the Medical Officers of OMHS cadre through National Eligibility Test like NEET/INI CET for the sponsored DNB course.

32. We have also considered the aspect that the National Board of Examinations in Medical Sciences, the National Medical Commission (NMC) do not make any such distinction between the DNB and DNB sponsored as sought to be argued by the opposite parties. The broad proposition of the law is that there can not be discrimination at the hands of employer of a group of employees without there being any intelligible differentia.

33. Indeed we have to and we do agree with the propositions of law laid down in P.U. Joshi (supra) that questions relating to constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy. However, State after framing a policy to allow doctors in the OMHS cadre to go for PG study, cannot differentiate between DNB and DNB sponsored, when the authority imparting and conducting the course for grant of degree: National Board of Examinations in Medical Sciences nor the regulatory authority NMC or the Statute made under Article 309 of the Constitution of India (Odisha Service Code) do not make any such distinction.

34. In Superintendent and Legal Remembrancer, State of West Bengal vs. Corporation of Calcutta : 1966 SCC OnLine SC 42 : AIR 1967 SC 997, it was held by the full bench of nine Hon'ble Judges of the Apex Court:

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24. There is, therefore, no justification for this Court to accept the English canon of construction, for it brings about diverse results and conflicting decisions. On the other hand, the normal construction, namely, that the general Act applies to citizens as well as to State unless it expressly or by necessary implication exempts the State from its operation, steers clear of all the said anomalies. It

prima facie applies to all States and subjects alike, a construction consistent with the philosophy of equality enshrined in our Constitution. This natural approach avoids the archaic rule and moves with the modern trends. This will not cause any hardship to the State. The State can make an Act, if it chooses, providing for its exemption from its operation. Though the State is not expressly exempted from the operation of an Act, under certain circumstances such an exemption may necessarily be implied. Such an Act, provided it does not infringe fundamental rights, will give the necessary relief to the State. We, therefore, hold that the said canon of construction was not "the law in force" within the meaning of Article 372 of the Constitution and that in any event having regard to the foregoing reasons the said canon of construction should not be applied for construing statutes in India. In this view it is not necessary to express our opinion on the question whether the aforesaid rule of construction would not apply to the trade activities of the State, even if it applied to its sovereign activities.

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[Underlined to supply emphasis]

Applying the principles laid in Superintendent and

Legal Remembrancer (supra) we hold that Rule 179 of the Odisha Service Code is also binding on State.

35. It has to be noted that the State Government has the authority and can impose the conditions that would follow if a doctor serving in OMHS cadre goes for DNB (Post MBBS) (sponsored) which has to be identical to the conditions imposed for granting NOC to the doctors in the OMHS cadre who apply for NOC for prosecuting PG i.e. MD, MS, DNB/DNB MDMS, DNB (Post Diploma) etc.

36. Evidently Annexure-A/1 i.e., proceedings of the meeting of the committee held on 02.09.2022 in the department conference hall to formulate a policy for grant of NOCs to the medical officers of OMHS Cadre who apply for higher studies /SR Ship/Fellowship in different institutions of the State as well as outside the State, does not disclose any reason whatsoever for making a distinction as far as non-grant of NOC to the Medical Officer of OMHS cadre who seek to apply DNB (Post MBBS) in sponsored category.

37. It has been settled by the Hon'ble Supreme Court in Commissioner of Police, Bombay v. Gordhandas Bhanji : AIR 1952 SC 16 and also reiterated in Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi: AIR 1978 SC 851 that the decision of the authority must disclose the reasons itself at the first instance.

We do not find any reason whatsoever disclosed in the decision dated 02.09.2022 justifying paragraph-5: i.e.

"5. NOC will not be issued to the Medical Officers of OMHS cadre for the sponsored DNB course."

38. By applying *Gordhandas Bhanji (supra)* and *Mohinder Singh Gill (supra)*, this Court in judicial review is not required to, rather should not go to the purported reasons disclosed in the counter affidavit and other additional affidavits filed by the opposite parties as the reasons are not contained in the decision itself. However, since the State has raised a contention that non-grant of NOC is a policy decision, we have endeavoured to examine the reasons stated in the counter justifying the discriminatory action of the State. We are not persuaded to accept the contentions of State, being guided by Article 14 of the Constitution of India and the principles of law enunciated by the Apex Court as we have discussed.

39. In the relied upon decision in *Tanvi Behl i.e. Jagadish Saran v. Union of India*: (1980) 2 SCC 768, Krishna Iyer, J. dealt with the issue of graduate doctors seeking admission to PG being dealt differentially on basis of residence. The eloquent reasons expounded by Krishna Iyer, J. are also to be applied in the case at hand when the State treats differentially doctors in OMHS cadre on the basis of admission sought for i.e. sponsored seat or not in DNB (Post MBBS). By applying the tests elaborated in *Jagadish Saran* (1980) 2 SCC 768, reiterated in *Dr. Pradeep Jain* (1984) 3 SCC 654, *Saurabh Chaudri* (2003) 11 SCC 146 and *Tanvi Behl (supra)*, the decision of State not to grant NOC fails, being manifestly arbitrary, unreasonable, being violative of Article 14 of the Constitution.

40. In view of the discussions above, we allow the writ application directing the authorities to grant 'No Objection Certificate' to the petitioner-doctor working in the OMHS cadre to participate in the Centralized Merit Based Counseling for admission to Sponsored DNB (Post MBBS and Post Diploma) seats – 2025 admission session by 02.01.2026 so as to enable the petitioner to participate in the counseling before the last date, 8th January, 2026 as notified by the National Board of Examinations in Medical Sciences, New Delhi by notice dated 10.12.2025.