

(2025) 10 PAT CK 1341

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.3712 Of 2025

Nikhil Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 13-10-2025

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 21

Citation : (2025) 10 PAT CK 1341

Hon'ble Judges : Harish Kumar, J

Bench : Single Bench

Advocate : Mrigank Mauli, Deepak Kumar, Vertikka K. Kashyap, Prasoon Sinha, Prabhat Kumar, Rupak Kumar, Anil Chandra

Final Decision : Dismissed

Judgement

Harish Kumar, J

1. Heard the parties.

2. The petitioner having completed his MBBS Degree in the year 2020 from the Indira Gandhi Institute of Medical Science, Patna has completed his internship in the year 2021. Being eligible for Post-Graduate Medical Admission, the petitioner appeared in NEET(PG)-2024 and qualified for PGMAC-2024 counselling. Accordingly, he filled up online application form for attending Post Graduate Medical Admission Counselling for admission to MD/MS/PG Diploma/DNB (Degree/ Diploma) Courses in Government Medical Colleges for the Session 2024. The petitioner participated in all the three rounds of counselling but no seat was allotted to him. After third round of counselling, some of the seats remained vacant and thus for filling up those vacant seats, Bihar Combined Entrance Competitive Examination Board (for short 'the BCECE Board') published Notice for Stray Vacancy Round Online Counselling vide Advt. No. BCECEB (PGMAC)-2024/20 and 2024/21 dated 20.02.2025.

3. The petitioner, being eligible for Stray Vacancy Round Online Counselling got

his registration done. Last date for willingness and online registration-cum-choice filling for seat allotment was 23.02.2025. The seat matrix for vacant seats was published on website and as per the seat matrix, candidates have to fill choice seat. The counselling having been carried as per the scheduled on 25.02.2025, the BCECE Board published advertisement no.BCECEB(PGMAC)-2024/22 and provisional seat allotment result of Stray Vacancy Round Counselling was published. The petitioner was allotted Psychiatry at Patna Medical College. However, after publication of the provisional seat allotment result on 25.02.2025, all of a sudden on 26.02.2025, the BCECE Board published fresh advertisement no. BCECEB(PGMAC)-2024-23 and thereby allowed fresh registration and change in choices.

4. Aggrieved with the action of the respondent authorities, the petitioner has preferred the present writ petition seeking quashing of the advertisement no.BCECEB(PGMAC)-2024/23 dated 26.02.2025, under which the BCECE Board allowed modification in filled choices for seat allotment in Stray Vacancy Round Counselling, which provisional seat allotment result has already been published on 25.02.2025. The petitioner also sought a direction upon the respondents not to allow fresh online registration-cum-choice filling for already closed Stray Vacancy Round Online Counselling vide advertisement no.BCECEB(PGMAC)-2024/20 and 2024/21 dated 20.02.2025, and further the respondent be directed to publish the final seat allotment result/allotment order on the basis of provisional allotment result dated 25.02.2025.

5. Mr. Mrigank Mauli, learned Senior Advocate for the petitioner while assailing the impugned advertisement dated 26.02.2025 has primarily taken this Court through the advertisement no.2024/20 dated 20.02.2025 and contended that once a candidate has already submitted his choice within the locking period, the candidate will not be permitted to modify choices after locking. The candidate who will be allotted seat in Stray Vacancy Round Online Counselling will be treated as admitted and if he/she does not take admission on allotted seat of Stray Vacancy Round or his/her seat get cancelled, the security deposit amount will be forfeited as well as he/she will not be eligible for further round of counselling. The advertisement clearly postulates that the seat matrix of vacancies after completion of round three counselling will be available on Board's website from 20.02.2025. The last date for willingness and online registration-cum-choice filling for seat allotment (Stray Vacancy Round) was fixed till 23.02.2025. Publication of provisional seat allotment result and filing of objection through email was prescribed up to 25.02.2025 and the publication of final seat allotment result was fixed on 26.02.2025.

6. Adverting the aforesaid facts, learned Senior Advocate further contended that as per Clause 12 of advertisement dated 20.02.2025, once choice is locked, the same cannot be modified and by doing so, the BCECE Board violated its own rule. Such action of the respondent-Board is arbitrary, unreasonable and discriminatory causing serious prejudice to entitlement of the petitioner and is

nothing but a colourable exercise of power. Referring to the averments made in the supplementary affidavit filed on behalf of the petitioner, learned Senior Advocate contended that on 02.03.2025, the BCECE Board has published the final result of PGMAC-2024 Stray Vacancy Round, which is completely contrary to the provisional seat allotment result published on 25.02.2025. He further contended that in the freshly published result contained in Annexured-P/8, the name of the petitioner is missing and no course was allotted to him and the seat which was earlier allotted to the petitioner has been allotted to newly added respondent no.6. The act of the respondents to cancel the provisional result and to give fresh option of choice filling by extending the date was not due to any error but to benefit certain set of candidates.

7. Mr. Mauli, learned Senior Advocate further urged that though through the impugned advertisement it has been communicated that on 25.02.2025 the provisional seat allotment result was published on the website of Board and the objections were invited and in the light of representations/objections/requests received, certain errors were found after investigation; thus, in the aforesaid premise, the candidates who had already given their willingness for Stray Vacancy Round Online Counselling and filled choices, are permitted to make changes in their filled choices such as add/remove in their choices as per the prescribed scheduled, but surprisingly, in the counter affidavit, it has been brought to the notice that a single complaint has been made by a candidate, namely, Siddhant Verma that while he was filing choices in Stray Vacancy Round of PGMAC-2024 counselling, EWS seat of Respiratory Medicine of JLNMC, Bhagalpur was not showing in his available choices on the counselling portal and he was unable to fill that choice. There was no explanation as to how NIC came to the conclusion that only Siddhant Verma's IP address could not see the Respiratory Medicine at JLNMC, while all other IP addresses of other candidates could see the said seat. The complaint was also sent through email at 08:24 PM; thereafter the complaint was duly sent to the NIC and the NIC found the objection raised with the counselling portal to be correct, but the Board has failed to place any letter or email through which the NIC was informed and even otherwise if the complaint was from one candidate then there could have been a minute change but cancellation of entire provisional seat allotment was wholly arbitrary and prejudices the claim of the petitioner. It is vehemently contended that there are lot of unexplained statements in the counter affidavit that raises suspicion on the conduct of BCECE Board to follow fresh choice filling. It has further been clarified that allotment of seat is not on the basis of merit only, instead of allotment of seat is on the basis of merit-cum-choice. The seat which was allotted to the petitioner in the Stray Round Counselling has subsequently been allotted to newly added respondent no.6 on the basis of his merit-cum-choice rendered in terms with the impugned advertisement dated 26.02.2025. Nonetheless, he had earlier never preferred Psychiatry in the Patna Medical College in his choice.

8. While concluding his submissions, Mr. Mauli, learned Senior Advocate for the

petitioner submitted that for no fault of the petitioner, he has been put to jeopardy and thus he is required to be compensated in terms with the law laid down in the case of *S. Krishna Sradha v. State of Andhra Pradesh and Others* [(2020) 17 SCC 465], as the petitioner, in the instant case, has approached this Court at the earliest and without any delay on 28.02.2025 itself by putting the impugned advertisement dated 26.02.2025 under challenge. The principle applied in the afore-noted case also govern the present case.

9. Reliance has also been placed on a decision rendered by the Apex Court in the case of *Manoj Kumar v. Union of India and Ors.* [(2024) 3 SCC 563] and submitted that it is the primary duty of the Constitutional Courts to control power by setting aside illegal and arbitrary administrative action. Where prayer in the writ petition is unattainable due to passage of time, constitutional courts should not dismiss petition on the ground of perceived futility but must transcend constraints of time and perform the primary duty to control and regulate the exercise of power.

10. Learned Senior Advocate referring to the decision rendered by the Apex Court in the case of *Vanshika Yadav Vs. Union of India (UOI) and Ors.* [(2024) 9 SCC 743], has submitted that cancellation of examination or counselling was justified only when sanctity of examination was found to be compromised at systemic level and it is not possible to separate tainted candidate from untainted one. In the case in hand, only a single complaint has been made and therefore cancellation of entire counselling is not justified.

11. Mr. Prasoon Sinha, learned Senior Advocate representing the BCECE Board submitted that a provisional seat allotment result for the Stray Vacancy Round was published by the Board on its official website on 25.02.2025, wherein the petitioner was only provisionally allotted a seat in Patna Medical College, Patna in the Psychiatry course. Referring to the advertisement no.BCECEB (PGMAC)-2024/22 dated 25.02.2025, it is submitted that the candidates were duly directed to check their results and were permitted to submit objection, if any, till 11:59 PM on 25.02.2025. In the said notice, it was clarified that after considering the objections received, the final seat allotment result would be published on 26.02.2025. Subsequent to the publication of the provisional result, it has been brought to the attention of the Board through a complaint sent by a candidate, namely, Siddhant Verma that while participating in choice filing process for Stray Vacancy Round of PGMAC-2024 counselling, EWS seat of Respiratory Medicine of JLNMC, Bhagalpur was not visible or available on the counselling portal. He further complaint that despite being online and locked into the counselling portal, he was unable to view or opt for the aforementioned seat during the choice filling window. Upon the publication of the provisional allotment list, he noticed that the said EWS seat was allotted to a candidate with rank 16712 under the EWS category which is lower in merit than his own rank 15035. It is in such premise he raised an objection making a complaint of denial of fair opportunity to compete for that seat due to technical or administrative lapse.

12. On receipt of such objection, the matter was referred to the NIC, which is responsible for Development and Management of counselling portal. Upon verification, the NIC found the objection to be valid, confirming that the issue had occurred due to technical error in the counselling portal. Thereafter, all the candidates were duly informed through a notice published vide advertisement no.2024/23 dated 26.02.2025 that those candidates who had already exercised choice filling while giving their willingness for Stray Vacancy Round pursuant to earlier advertisement, would be given an opportunity to modify their previously submitted choices within the prescribed revised schedule. Accordingly, the date for modification of choices was extended and thereafter, final seat allotment result for Stray Vacancy Round was published on 02.03.2025.

13. Mr. Sinha, learned Senior Advocate further urged that it is not only the petitioner, who has been excluded in freshly published final allotment result, but a total of 21 candidates, whose names had earlier appeared in the provisional allotment result, were excluded in the final result dated 02.03.2025 on account of their lower merit or rank. Taking this Court through the various annexures and the averments made in the writ petition as well as in the counter affidavit(s), he further submitted that the petitioner, who had been provisionally allotted a seat in the Patna Medical College, Patna for the Psychiatric course was ranked lower in merit than respondent no.6, who was ultimately allotted the said seat in the revised final allotment result published on 02.03.2025 in accordance with the principle of merit-cum-choice. Admittedly, respondent no.6, who held a higher rank of PG, AIR-14005 than the petitioner, who had secured NEET PG, AIR-23931, he has been rightfully allotted the sole available seat under the unreserved category for the Psychiatric course in the Patna Medical College, Patna.

14. Upon notice being issued, respondent no.6 has entered his appearance through his Advocate, Mr. Rupak Kumar, who has submitted that admittedly respondent no.6 has completed his MBBS degree in the year 2022 from JLMNC, Bhagalpur and appeared for the NEET PG Examination in which he was declared qualified for counselling. On 26.02.2025, BCECE Board published a notice of Stray Vacancy Round Counselling through advertisement no. BCECEB (PGMAC)-2024/23 extending the date of online for registration-cum-choice filling/modification filing up choice of seat allotment. In pursuant thereto, respondent no.6 exercised his option by choosing Psychiatric course under the UR Category at Patna Medical College, Patna in the final seat allotment result published. Thereafter, he was allotted the said seat strictly on the basis of merit-cum-choice, his rank being higher than that of the petitioner.

15. This Court has bestowed anxious consideration to the submissions advanced by the learned Advocate for the respective parties and also perused the materials available on record.

16. There is no doubt that the petitioner's initial allotment in Stray Vacancy Round Online Counselling, was only provisional subject to objection invited by

the candidate(s). This fact was duly mentioned in the notice for Stray Vacancy Round Online Counselling dated 20.02.2025, which allowed the candidates to file their objections on 25.02.2025 till 11:59 PM with explicit contemplation that publication of final result shall be made after considering such objections.

17. The objection was received before the cut-off date and time, which was duly forwarded to the NIC, as the complaint was related to the counselling portal duly developed and managed by the NIC. The BCECE Board has taken the services of NIC Delhi and NIC Patna for conducting online counselling of different examinations, including PG (MAC). After verification, the NIC found the complaint/objection raised with respect to the counselling portal to be correct. Once substance has been found in the objection raised by a candidate, the BCECE Board was well within its jurisdiction and incumbent under the law to act on such a verified anomaly/mistake and to rectify it by providing a fair opportunity to all candidates similarly situated. The remedial measures was not confined to a particular individual but applied uniformly to all candidates, ensuring a procedural fairness.

18. It is the admitted position that twenty candidates whose names did not appear in the provisional seat allotment results, were allotted seats on the basis of their merit-cum-choice in Stray Vacancy Round and many of others candidates, their institutions/courses changed in Stray Vacancy Round on the basis of fresh counselling. The final allotment was made strictly based upon merit-cum-choice principle and respondent no.6 having a higher rank than the petitioner was rightfully allotted the Psychiatric seat; the petitioner, whose AIR was 23931 could not claim precedent over a more meritorious candidate. A candidate does not acquire a vested right merely by a provisional allotment. The petitioner's grievance is solely premised on a provisional result, which was liable to change based on objections, technical errors and compliance with merit principle, if warranted. No material has been placed before this Court to establish that the decision to extend the choice filling date or revise the final result was actuated with malafide or was a colourable exercise of power. The suspicion howsoever strong cannot take the place of proof. All the more, the petitioner's allegation in that regard remain vague and unsubstantiated.

19. Before parting with the case, now this Court comes to the decision upon which reliance has been placed by the learned Senior Advocate for the petitioner in the case of S. Krishna Sradha (*supra*), where the matter was placed before three Judges Bench of the Apex Court upon noticing contrary view taken in the case of *Asha v. Pt. B.D. Sharma University of Health Sciences* [(2012) 7 SCC 389] and *Chandigarh Administration & Another v. Jasmine Kaur & Ors.* [(2014) 10 SCC 521]. The Hon'ble Court has painstakingly enunciated guidelines to extend relief to a candidate who has been denied admission in MBBS course illegally or irrationally by the authorities for no fault of his/her, who has approached the Court in time. The emphasis and mandate of the Apex Court in the afore-noted case was the right to equal and fair treatment is a component of

Article 14 of the Constitution. A transparent and fair procedure is the duty of every legal authority connected with admissions. In such cases, denial of fair treatment to the candidate would not only violate his/her right under Article 14 but would seriously jeopardize his/her right under Articles 19 and 21 of the Constitution of India. A natural corollary of declaring that an administrative act more particularly the denial of admission illegally and for no fault of a candidate/student violates principles of Article 14 is that the citizen injured must be put back to his/her original position. For a meritorious student seeking admission in medical course is very important in the life of student/candidate and denial of admission to a meritorious candidate though no fault of his/her violates his/her fundamental rights. The Court while observing that a balance is required to be struck has observed that the view taken by the two Judges Bench of the Apex Court in *Jasmine Kaur (supra)*, that the only relief which can be granted to such a candidate would be the compensation only is not good law and cannot be accepted. Even granting a relief to such a candidate/student in the next academic year and to accommodate him/her in the next year and in the sanctioned intake may even affect the right of some other candidate/student seeking admission in the next academic year and that too for no fault of his/her. The Court has thus directed that in the exceptional and in the rarest of rare cases and in case where all the conditions stipulated in paragraph 3.3 in the case of *Jasmine Kaur (Supra)* are satisfied, the Court can grant exceptional relief to the candidate of granting admission even after the cut off date is over.

20. It is the admitted position that the aforesaid direction was only confined to the admission in MBBS course and could only be effected in case where there is fault on the part of the authorities and apparent breach of rules and regulations and the candidate is found to be more meritorious than the other candidates.

21. In the case in hand, this Court does not find any fault or breach of rules and regulations on the part of authorities, besides the admitted position that a person ranked senior to the petitioner has been given preference to him.

22. So far the decision rendered in the case of *Manoj Kumar (supra)* is concerned, the same would not be applicable in the facts of this case, as this Court does not find the action of the respondent authorities illegal and arbitrary. Further, the decision in *Vanshika Yadav (supra)*, is also not attracted as that was the case where the Court has framed guidelines to be adopted while conducting NEET Examination. Besides, the afore-noted matter relates to a widespread malpractice in the NEET Examination and the Court held that the cancellation of examination is justified only when sanctity of examination is found to be compromised at systemic level and it is not possible to separate tainted candidate from untainted one. However, in the case in hand, the matter relates to Stray Vacancy Round Online Counselling of PGMAC candidate, which has been rescheduled when an error had been admitted by the NIC in course of preparation of provisional result for allotment of seat(s) to different institutions/courses.

23. In view of the discussions made hereinabove, this Court is of the opinion that the action taken by the respondent-Board was procedurally fair, reasonable and there was necessity to rectify an error confirmed by the Technical Agency. The final seat allotment made on 02.03.2025 is in consonance with the merit-cum-choice principle and does not call for interference.

24. Accordingly, the writ petition sans any merit stands dismissed.