

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 1369 of 2017

In

Civil Writ Jurisdiction Case No.388 of 2017

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Gul Afshan Naz, D/o Shoaib Ahmad, Resident of East of Masjid, Baitul Karim, Isha Nagar, Naya Tola, Phulwarisharif, Patna

... .. Appellant/s

Versus

1. The Union of India through the Secretary, Ministry of Health, Govt. of India, New Delhi
2. The Chairman, Central Board of Secondary Education, Education Centre-2, Community Centre, Preet Vihar, Delhi
3. The Secretary, Ministry of Human Resources Development, Govt. of India, New Delhi
4. The Director General, Directorate General of Health Service Nirman Bhawan, New Delhi
5. The Principal Secretary Department of Health and Family Welfare, Govt. of Bihar, New Secretariat, Patna, Bihar
6. The Chairman, Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building, Near Patna Airport, Patna-14
7. The Controller of Examination, Bihar Combined Entrance Competitive Examination Board I.A.S. Association, Building, Near Patna-Airport, Patna-14
8. Medical Council of India POCET- 14, Sector-8, Dwarka New Delhi through its Chairman
9. Arvind Choudhary, the then Controller of Examination BCECEB, IAS Association Building, Near Patna Airport, Patna-14
10. Akbar Kabir S/o Humayum Kabir, SKMC, Muzaffarpur
11. Rishu Kumar S/o Pappu Kumar Pandey SKMC, Muzaffarpur
12. Anil Kumar Yadav S/o Umesh Yadav DMC, Laheriasarai
13. Ashtha Raj S/o Raj Kishor Prasad IGIMS, Patna

... .. Respondent/s

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with

Letters Patent Appeal No.1075 of 2017

In

Civil Writ Jurisdiction Case No.19183 of 2016

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1. The Chairman, Bihar Combined Entrance Competitive Examination Board, IAS Association Building, Near Patna Airport, Patna-14
2. The Controller of Examination, Bihar Combined Entrance Competitive Examination Board, IAS Association Building, Near Patna Airport, Patna-14
3. Arvind Choudhary, The Then Controller of Examination, BCECEB, I.A.S. Association Building, Near Patna Airport, Patna-14.

... .. Appellant/s

Versus

1. Dipty Preyasi, D/o-Diwakar Singh Bahadur, Resident of Village-Nepura, PO and P.S.-Asthawan, District-Nalanda.
2. The Union of India through the Secretary, Ministry of Health Govt. of India, New Delhi.
3. The Chairman, Central Board of Secondary Education, Education Centre-2, Community Centre, Preet Vihar, Delhi.
4. The Secretary, Ministry of Human Resources Development, Govt. of India, New Delhi.
5. The Director General, Directorate General of Health Services, Nirman Bhawan, New Delhi
6. The Principal Secretary, Department of Health and Family Welfare, Govt. of Bihar, New Secretariat,
7. Medical Council of India, Pocket 14, Sector-8, Dwarka, New Delhi, through its Chairman.
8. Akbar Kabir, Son of Humayun Kabir, SKMC, Muzaffarpur.
9. Rishu Kumar, Son of Papu Kumar Pandey, SKMC, Muzaffarpur.
10. Anil Kumar Yadav, Son of Umesh Yadav, DMC, Laheriasarai.
11. Astha Raj Son of Raj Kishore Prasad, IGIMS, Patna.

... .. Respondent/s

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with

Letters Patent Appeal No. 1076 of 2017

In

CIVIL WRIT JURISDICTION CASE NO. 19135 OF 2016

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1. The Chairman, Bihar Combined Entrance Competitive Examination Board IAS Association Building, Near Patna Airport, Patna-14
2. The Controller of Examination, Bihar Combined Entrance Competitive Examination Board, IAS Association Building, Near Patna Airport, Patna-14
3. Arvind Choudhary, The Then Controller of Examination, BCECEB, I.A.S. Association Building, Near Patna Airport, Patna-14.



... .. Appellant/s

Versus

1. Manisha Gaurav, D/o Sanjay Kumar, Resident of behind Qr. No.30, Road no. 10, Moh-Chakbinda, Gardanibagh, PS-Gardanibagh, District-Patna.
2. The Union of India through the Secretary Ministry of Health, Govt. of India New Delhi
3. The Chairman, Central Board of Secondary Education, Education Centre-2, Community Centre, Preet Vihar, Delhi
4. The Secretary, Ministry of Human Resources Development, Govt. of India, New Delhi.
5. The Director General, Directorate General of Health Services, Nirman Bhawan, New Delhi
6. The Principal Secretary, Department of Health and Family Welfare, Govt. of Bihar, New Secretariat, New Secretariat, Patna, Bihar
7. Medical Council of India, Pocket 14, Sector-8, Dwarka, New Delhi, through its Chairman.
8. Akbar Kabir, Son of Humayun Kabir, SKMC, Muzaffarpur.
9. Rishu Kumar, Son of Pappu Kumar Pandey, SKMC, Muzaffarpur
10. Anil Kumar Yadav, Son of Umesh Yadav, DMC, Laheriasarai.
11. Astha Raj, Son of Raj Kishore Prasad, IGIMS, Patna.

... .. Respondent/s

with

Letters Patent Appeal No. 1077 of 2017

In

Civil Writ Jurisdiction Case No.17708 of 2016

1. The Chairman, Bihar Combined Entrance Competitive Examination Board IAS Association Building, Near Patna Airport, Patna-14
2. The Controller of Examination, Bihar Combined Entrance Competitive Examination Board, IAS Association Building, Near Patna Airport, Patna-14
3. Arvind Choudhary, The Then Controller of Examination, BCECEB, I.A.S. Association Building, Near Patna Airport, Patna-14.

... .. Appellant/s

Versus

1. Adhishree, D/o Anil Kumar Tiwari, C/o Shri B.N. Tiwari, Behind Sanjay Cinema, Brahmapura (New Colony), P.S.-Brahmapura, Post- MIT, District-Muzaffarpur
2. The Union of India through the Secretary, Ministry of Health, Govt. of India,



New Delhi.

3. The Chairman, Central Board of Secondary Education, Education Centre-2, Community Centre, Preet Vihar, Delhi
4. The Secretary, Ministry of Human Resources Development, Govt. of India, New Delhi.
5. The Director General, Directorate General of Health Services, Nirman Bhawan, New Delhi
6. The Principal Secretary, Department of Health and Family Welfare, Govt. of Bihar, New Secretariat, Patna, Bihar
7. Medical Council of India, Pocket 14, Sector-8, Dwarka, New Delhi, through its Chairman.
8. Akbar Kabir, Son of Humayun Kabir, SKMC, Muzaffarpur
9. Rishu Kumar, Son of Pappu Kumar Pandey, SKMC, Muzaffarpur
10. Anil Kumar Yadav, Son of Umesh Yadav, DMC, Laheriasarai.
11. Astha Raj, Son of Raj Kishore Prasad, IGIMS, Patna

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1369 of 2017)

For the Appellant/s : Mr. Deepak Kumar Sinha, Advocate
For the Respondent/s : Mr. Gopal Govind Mishra, Advocate
Mr. P.K. Shahi, Advocate General
Dr. K.N. Singh, ASG
Mr. Kumar Priya Ranjan, Advocate
Mr. Kumar Brijnandan, Advocate
Mr. Prasoon Sinha, Advocate
Mr. Vinay Krishna Tripathy, Advocate
Mr. Binodanand Mishra, Advocate
Mr. Mritunjay Kumar, Advocate

(In Letters Patent Appeal No. 1075 of 2017)

For the Appellant/s : Mr. P.K. Shahi, A.G.
Mr. Prasoon Sinha, Advocate
For the Respondent/s : Mr. S.D. Yadav-AAG-9
Mr. B.B. Mishra, A.C. to AAG-9
Dr. K.N. Singh, ASG
Mr. Kumar Priya Ranjan, CGC
Mr. Ansul, Advocate
Mr. Anuj Kumar, Advocate
Mr. Kumar Brijnandan, Advocate

(In Letters Patent Appeal No. 1076 of 2017)

For the Appellant/s : Mr. P.K. Shahi, Advocate General
Mr. Prasoon Sinha, Advocate
For the Respondent/s : Mr. Suryadeo Yadav, AAG-9



Mr. Prem Ranjan Kumar, A.C. to AAG-9
Dr. K.N. Singh, ASG
Mr. Kumar Priya Ranjan, CGC
Mr. Anuj Kumar, Advocate
Mr. Ansul, Advocate
Mr. Kumar Brijnandan, Advocate

(In Letters Patent Appeal No. 1077 of 2017)

For the Appellant/s : Mr. P.K. Shahi, Advocate General
Mr. Prasoon Sinha, Advocate
For the Respondent/s : Mr. Suryadeo Yadav-AAG-9
Mr. B.B. Mishra, A.C. to AAG-9
Dr. K.N. Singh, ASG
Mr. Kumar Priya Ranjan, CGC
Mr. Anuj Kumar, Advocate
Mr. Ansul, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-07-2023

Medicine as a career option stands out from others; desired equally by the parents and their wards. Out of the various disciplines, MBBS occupies the place of pride and the jostling to procure admission has resulted in the Courts of this land having spent considerable time in examining the nuances of selection to ensure fairness, transparency and equality as also avoid, illegality, arbitrariness and colourable exercise of power. The Hon'ble Supreme Court has time and again held that in no case can merit be compromised and rendered a casualty. It is in the backdrop of the principles enunciated by the Hon'ble Supreme Court that the alternate/substitute remedy of



compensation granted in the above cases by the learned Single Judge, to the disappointed candidates who were the petitioners in the writ petitions, has to be considered in the appeals filed by the Bihar Combined Entrance Competitive Examination Board, which carried out the admissions under challenge, on the directions issued by the Hon'ble Supreme Court.

2. Bereft of the unnecessary details, it has to be noticed that the admissions were for the academic year 2016-17, carried out to the MBBS/BDS seats all over the country through the National Eligibility-cum-Entrance Test [NEET (UG)-2016] conducted by the Central Board of Secondary Examination, the results of which were published on 16.08.2016.

3. The writ petitioners, who are the first respondents in the various appeals, were found eligible for counselling to the 85% State quota seats and 15% All India Quota (AIQ) seats. The petitioners, all of them, obtained admission to the BDS course for the academic year, after which selection certain seats in the AIQ remained vacant. The States were carrying on counselling for admissions to the unfilled AIQ seats reverted to the State quota; when an application was filed by certain candidates before the Hon'ble Supreme Court. The Hon'ble Supreme Court passed two orders, dated 03.10.2016



and 06.10.2016; the first of which directed the States not to fill up the unfilled seats reverted from the AIQ and the second, directed the State authority to fill up such vacant seats remaining unfilled, from the AIQ. The period granted for filling up such vacancies from the AIQ was a single day; i.e. 07.10.2016. The petitioners appeared for counselling, but they were denied admission. From those who were admitted, the petitioners impleaded four persons who obtained lesser marks than the petitioners. We extract the tabular form of the merit-wise position, as found in the impugned judgment: -

All India Ranking	Name	Status of Party
13172	Manisha Gaurav	Petitioner in CWJC No. 19135 of 2016
13351	Adhishree	Petitioner in CWJC No. 17708 of 2016
13826	Akbar Kabir	Respondent No. 10 (in all cases)
14003	Rishu Kumar	Respondent No. 11 (in all cases)
14212	Gul Afshan Naz	Petitioner in CWJC No. 388 of 2017
14439	Dipty Preyasi	Petitioner in CWJC No. 19183 of 2016
14747	Anil Kumar Yadav	Respondent No. 12 (in all cases)
14766	Astha Raj	Respondent No. 13 (in all cases)

4. From the above, it is clear that two petitioners,



if permitted counselling would have obtained the first two of the four seats, and the other two petitioners would not have been admitted at all. Referring to the petitioners by their names, Manisha Gaurav and Adhishree obtained ranks above the last four candidates admitted in the counselling conducted on 07.10.2016. The ranks of Gul Afshan Naz and Dipty Preyasi were above the ranks obtained by the Respondent Nos. 12 & 13 but below that obtained by respondents 10 & 11.

5. By the impugned judgment, Manisha Gaurav and Adhishree were found to have been illegally denied admission to the MBBS course and were hence granted Rs. 20 lacs each as compensation. Gul Afshan Naz was found to have approached the Court only after three months. Finding the delay to be gross insofar as the Hon'ble Supreme Court having stipulated specific time for counselling, the relief of compensation was denied to her. Dipty Preyasi though would not have secured an admission if the other three petitioners were also admitted to counselling, was awarded a compensation of Rs. 10 lacs since two persons, who had received lesser ranks, were admitted to the MBBS course. The Board along with the Controller of Examinations challenge the judgment of the learned Single Judge in three writ petitions and the aggrieved



petitioner, who was deprived of compensation on the grounds of delay, seek the same in her appeal.

6. The respondents mainly took up three grounds to justify non participation of the 1st respondents/petitioners in the counselling on 07.10.2016. It was first urged that the petitioners were denied participation since the Hon'ble Supreme Court had specifically directed that the admissions already granted shall not be disturbed and the petitioners were already admitted to the BDS course. Then it was submitted that the Hon'ble Supreme Court had directed that unfilled AIQ seats of the MBBS course shall not be reverted to the State quota and hence, reshuffling of allotted seats were not allowed. Lastly and surprisingly, a contention was also taken that the petitioners were unable to produce the original documents/certificates in the counselling held on 07.10.2016. We say surprisingly since, the learned Single Judge rightly found that the ground of no disturbance being permitted to the admission of the petitioners to the BDS course and that of non-production of original certificates are mutually destructive. If the appellant-Board was aware of the admission of the petitioners to the BDS course, there was no reason for insisting on the production of the original documents/certificates; especially when the eligibility



for admission to the MBBS/BDS courses are identical, when the Board itself had granted admission to the petitioners in the BDS course; which they were fully aware of on 07.10.2016 when they denied permission to attend the counselling on that specific ground. We fully agree with the learned Single Judge on this aspect.

7. The learned Single Judge looking at the statutory provisions and the regulations of NEET, found that the designated authority for counselling in the 15% AIQ is the Director General of Health Services, Government of India, whereas under the State quota, it is the authority constituted by the State Government; which in the State of Bihar is the appellant-Board. However, keeping in view the paucity of time, the Hon'ble Supreme Court had directed the appellant-Board itself to adopt a transparent procedure in making admissions on the basis of merit in AIQ. It was found that there was no denial of the fact that the petitioners were present for the counselling at the Centre on 07.10.2016; which was asserted by all the petitioners in their writ petitions, without any corresponding denial by the Board in its counter affidavit. Out of the petitioners, some had ranks above all the four respondents who were admitted last and two of them had higher ranks than two of



the admitted candidates. It was held that by preferring the less meritorious, there is serious infraction of the fundamental right of equality which not only is the noblest concept for a society, but also is enshrined in the Constitution. Relying on **Mridul Dhar (Minor) v. Union of India; (2005) 2 SCC 65**, the Court found itself unable to extend the cut-off date, as held in the cited decision, beyond 30th September, and in this case, beyond 07.10.2016; which was the date stipulated by the Hon'ble Supreme Court.

8. Having prepared a table based on the merit-wise position of the petitioners and the Respondent Nos. 10 to 13, the learned Single Judge referred to **Asha v. Pt. B.D.Sharma University of Health Sciences; (2012) 7 SCC 389**, wherein it was held that cut-off date cannot be a technical instrument to deny admission to a meritorious candidate and in the rarest of rare cases, the Court could mould the relief and make an exception to the cut-off date; which, however, is possible only when there is no fault attributable to the candidate, the candidate was diligent in pursuing his/her rights & remedies and there is fault found on the part of the authorities or an apparent breach of rules and regulations or principles, in the process of selection. It was found that there was no fault



attributable to the petitioners and but for one petitioner, the others were diligent in pursuing the remedies. It was also found that the State was in fault for there being an apparent breach of rules, regulations and principles to be followed in the process of selection and grant of admission. Finding the case of the petitioners to be fully covered by the principles enunciated in **Asha** (supra) and expressing helplessness to remedy the illegality visited on the petitioners by a grant of admission, the learned Single Judge awarded compensation, as stated hereinabove.

9. Shri P.K.Shahi, learned Advocate General appearing for the Board, assailed the impugned judgment on the ground that the learned Single Judge erred insofar as finding fault on the Board in having acted in breach of rules, regulations and principles in the process of selection. It is pointed out that in the present case, there was no question of a cut-off date and the counselling carried out on a single day was on the basis of a direction issued by the Hon'ble Supreme Court. The petitioners themselves were not before the Hon'ble Supreme Court and the direction issued by the Hon'ble Supreme Court was made applicable to the entire country, to not only enable admission of the aspiring candidates to the MBBS course, but also to ensure



that the seats in government colleges are not left vacant. In fact, the direction of the Hon'ble Supreme Court has to be interpreted by reading both the orders of the 3rd and 6th of October, 2016. It is crystal clear that the Hon'ble Supreme Court specifically directed the admissions already granted to be not disturbed; quite conscious of the fact that if that was done, there would be a cascading effect insofar as the seats falling vacant in the BDS course. The Board, hence, was justified in not considering the persons who were already admitted and making admissions from the AIQ, according to the ranks of persons who had not obtained admission till then. It is argued that though MBBS course is the most prestigious one, it does not necessarily follow that there would be loss suffered by a candidate, who completes the BDS course. The quantification of damages cannot at all be sustained especially when the entire exercise was on the directions of the Hon'ble Supreme Court; the interpretation of which could not be said to be favouring those persons who had already got admission. A measure of equity made by the Hon'ble Supreme Court cannot result in grant of compensation especially when the petitioners are all persons who were admitted to the BDS course.

10. Shri Ansul, learned counsel for the first



respondent, on the other hand asserts that the compensation granted is proper and in accordance with the principles as laid down by the Hon'ble Supreme Court. It is pointed out that the measure of admission in a subsequent year in **Asha** (supra) was frowned upon by a co-ordinate bench in **Chandigarh Administration vs. Jasmine Kaur (2014) 10 SCC 521**. **S.Krishna Sradha vs. State of Andhra Pradesh (2017) 4 SCC 516** referred the question to a larger bench finding apparent conflict between **Jasmine Kaur** and **Asha** (both supra). A larger bench of three judges in **S.Krishna Sradha (2) v. State of Andhra Pradesh (2020) 17 SCC 465**, held that in exceptional circumstances, in addition to the relief of restitution there could also be compensation granted. It was argued, based on the above decisions, that as of now by virtue of declaration in **S.Krishna Sradha (2)** (supra), the compensation as granted by the learned Single Judge is perfectly sustainable.

11.The learned counsel for the petitioner, who was denied the relief of damages, contends that three months cannot be said to be a gross delay and even a person ranked below her, one of the petitioners, was awarded a lesser compensation; while even that amount was denied to her.

12. We have given anxious consideration to the



grounds raised in the impugned judgment and the facts emanating therefrom as also the records, the arguments of the learned counsel and the precedents placed before us. We first looked at the decisions placed before us. In **Asha** (supra), the Hon'ble Supreme Court had granted admission to the appellant therein to the MBBS course in the year in which the matter was disposed of by the Hon'ble Supreme Court. In **Jasmine Kaur** (supra) another co-ordinate Bench frowned upon the directions issued; telescoping unfilled seats of one year into the permitted seats of the subsequent year, however meritorious a candidate is. It was also held that there cannot also be a direction to enhance the number of seats to accommodate such a candidate who deserved admission in the earlier year. The Supreme Court found that in such cases, it is appropriate that a compensation be granted to offset the loss caused. **S.Krishna Sradha** (supra) referred the question to a larger Bench finding apparent conflict between **Jasmine Kaur** and **Asha** (both supra). A larger bench of three Judges in **S.Krishna Sradha (2)** (supra) held that there could be a relaxation of cut-off date in exceptional circumstances when there is illegal and arbitrary denial of admission to a meritorious candidate. In addition to the relief of restitution it was held that there could also be compensation



granted. Compensation, it was held is an additional relief and not a substitute for equitable and restitutionary relief. This was further affirmed in **Maharshi Markandeshwar University v. Akriti Sharma 2022 SCC Online SC 1420**. It has to be emphasized that the facts of these decisions turned specifically on the manner in which the authority regularly conducted admissions, before the cut-off date, when the regulations of NEET as to how admissions are to be granted based on merit and the options exercised by each of the successful candidates were squarely applicable.

13. As we observed at the outset, the ground that the Hon'ble Supreme Court had specifically restrained the disturbance of already admitted candidates and the ground of petitioners having not produced their original documents/certificates cannot be sustained together. The appellant-Board being aware of the admission of the petitioners to the BDS course, there was absolutely no requirement for production of original documents/certificates, which were verified by the Board itself before the admission to the BDS course was granted. However, the interpretation of the directions in the Supreme Court judgment assumes relevance and we agree with the learned Advocate General appearing for the Board that



it has to be looked at holistically on a conjoint reading of both the orders passed by the Hon'ble Supreme Court.

14. We desist from extracting the orders since they are produced along with I.A. No. 5745 of 2017 in LPA No. 1075 of 2017. At the outset, the submissions made by the learned Additional Solicitor General that 91 seats; 87 in MBBS and 04 in BDS in the Government colleges in Madhya Pradesh were lying vacant was recorded. It was directed that the State of Madhya Pradesh shall fill up the 91 seats from the Government quota and it was also directed that the admissions already granted shall not be disturbed. Noticing that the interlocutory applications of other States are being listed on 06.10.2016, it was also directed that the seats which were reverted to the State quota and remained unfilled, shall not be filled up till then. On 06.10.2016, the operative portion of the order dated 03.10.2016 was noticed and the chart proffered by the learned Additional Solicitor General was extracted. As in the other States; in the State of Bihar also, for the MBBS course, there were 68 seats reverted from 15% AIQ after counselling on 23.09.2016. Similarly, in the BDS course 21 seats were reverted. The Hon'ble Supreme Court directed that the seats remaining vacant shall be filled up by the concerned States by adopting a



transparent procedure, regard being had to the criteria followed for filling up AIQ seats. It was clarified that such filling up of seats shall be done as per the merit in AIQ and that the entire process shall be completed by 07.10.2016. Obviously, the intention was to confer a Pan-India benefit to the candidates who qualified in the AIQ. We hasten to add that, this does not disqualify the petitioners who are all residents of the State, as seen from the address shown. But what assumes relevance is that, read together, the orders of 03.10.2016 and 06.10.2016, the Hon'ble Supreme Court intended that the admissions already granted shall not be disturbed. At first flush, it could be presumed that the direction to not disturb the admissions already made cannot work to the disadvantage of the meritorious candidates, who were admitted to various courses, less prestigious than the MBBS; especially since merit is the reigning consideration. But the admissions having been confined to a single day and the intention being, of not keeping vacant medical seats in government colleges; if those who are already admitted to other courses are allowed to participate and granted admission, then those seats would fall vacant; which also cannot be filled up.

15. With all the respect at our command, we are



of the opinion that reading the orders together, the Hon'ble Supreme Court intended that at least the seats in the Government colleges do not remain vacant; presumably due to the minimal fees demanded in such Government colleges and also the shortage of medical personnel in the country.

16. It is also very pertinent that the Hon'ble Supreme Court while noticing that certain States were granted extension of time to fill up the seats from the State Quota; which seats were reverted from AIQ, the seats found vacant in the other States were directed to be filled up from the AIQ adopting a transparent procedure. It was specifically directed that the filling up of such seats should be done based on the AIQ merit. The order was passed on 06.10.2016 and the time granted was for a single day, that too on the very next day. The order was directed to be put in the website of the DGHS and the competent authority of the Medical Council of India with suitable information passed on to the competent authorities of the States. It was clarified that no individual notices shall be given and also that the extraordinary measure shall be applicable only to the Government Colleges. This is the context in which we observed that the Hon'ble Supreme Court would have intended that the seats in Government Colleges do not remain vacant.



17. It is also very significant that while directing the AIQ merit to be followed, the Hon'ble Supreme Court was aware of the fact that there were persons in the State quota who had higher ranks who would also have taken admission to Dentistry and in following the AIQ merit probably persons from other States with lower ranks would be admitted. This was to ensure that a Pan India effect was ensured in the admissions especially in those seats which were not filled as per the AIQ merit. This was an extraordinary measure directed to be carried out in a single day by a transparent method following the AIQ criteria, to be carried out by the State authorities; which would have faced its own problems. The paucity of time and the extraordinary measure employed would commend us to find no arbitrariness in the admissions carried out. We also emphasize the specific direction in the order dated 03.10.2016 where it was specifically directed that the admissions already taken shall not be disturbed. This is not to be interpreted as a direction only to ensure that those persons in the State quota admitted to the AIQ, after the reversion of vacancies, are not disturbed. The reigning consideration was to ensure that the AIQ seats are given to the AIQ candidates and that the vacant seats are all filled up. In the backdrop of such intention, if the exercise impugned herein is



looked at, the same can be justified.

18. True, in the present case the Respondent Nos. 10 to 13 were also from the State of Bihar as are the petitioners herein. However, the petitioners were persons who obtained admission just prior to the orders of the Hon'ble Supreme Court, within the cut-off date. If they were permitted to participate in the extraordinary measure as directed by the Hon'ble Supreme Court then necessarily there would have been vacant seats in Dentistry which also could not have been filled up. Considering the fact that the measure adopted was an extraordinary one and that the Hon'ble Supreme Court had directed the admissions already taken to be not disturbed; we do not find any arbitrariness, illegality or colourable exercise of power on the part of the State authorities. The learned Single Judge was absolutely right in holding that there was no fault attributable to the petitioners and with respect to three petitioners they had approached the Court without any delay. However, we are unable to find any breach of rules, regulations and principles in the process of selection since the admissions were carried out under the directions of the Hon'ble Supreme Court, which directions were issued with a specific intention, that too for a single day and the Hon'ble Supreme Court had specifically



directed that the admissions already taken should not be disturbed. We are unable to find any valid reasoning for the compensation awarded; especially not one of a deliberate breach committed by the appellant-Board.

19. In this context, we also notice that the writ petitions were disposed of on 29.06.2017 within eight months of their institution and within the Academic Year. We have to specifically notice **Asha** (supra) which observed that for the first year the syllabus for both the BDS and MBBS courses are more or less the same; which fact was confirmed on behalf of the Medical Council of India. It was observed that except for one paper of anatomy, rest of the subjects and papers are more or less similar, particularly for the first six months. Hence, if the petitioners had pursued diligently the BDS Course to which they were admitted and had attended all the lectures they would have been eligible to pursue the MBBS Course and such directions could have been issued by the Writ Court. We are told that Manisha Gaurav, petitioner in CWJC No. 19135 of 2016 completed internship from Patna Dental College and Hospital in February, 2023. Adhishree and Dipty Preyasi did not continue in the Dentistry course and after appearing for the NEET in the next year joined for MBBS course respectively in Nalanda



Medical College and Hospital, Patna and Shri Krishna Medical College & Hospital, Muzaffarpur. As far as Gul Afshan Naz is concerned the learned Counsel was unable to apprise us of the subsequent conduct of the said student.

20. We have to further notice that even if the irregularity as pointed out by the petitioners occurred, in a regular admission within the cut off period, only Manisha Gaurav and Adhishree would be entitled to be admitted if there were only four seats available. We say this because if all the petitioners who asserted that they were present for counselling, participated along with Respondent Nos. 9 to 13 then Manisha Gaurav, Adhishree and Respondent Nos. 10 and 11 would have got admission in which event Gul Afshan Naz and Dipty Preyasi would not have been admitted to the MBBS course. This is an additional ground to deny compensation to Gul Afshan Naz and also Dipty Preyasi; the latter of whom was granted a lesser compensation by the learned Single Judge, which in any event is not tenable according to our reasoning. Further since the directions for filling up the seats was issued by the Hon'ble Supreme Court, the petitioners ideally ought to have approached the Hon'ble Supreme Court.

21. On the basis of the above reasoning, we are



convinced that the appeals of the Board LPA Nos. 1075 of 2017, 1076 of 2017 and 1077 of 2017 have to be allowed and the appeal of one of the appellants LPA No. 1369 of 2017 has to be dismissed. We do so and leave the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree

(Partha Sarthy, J)

Sujit/PKP.

AFR/NAFR	
CAV DATE	26.06.2023
Uploading Date	03.07.2023
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