

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16522 of 2023

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Faiyaz Alam S/o Late Sher Mohammad @ Sher Alam, R/o Village- Andabari, ward No. 11, PO- Bhawaniganj, PS- Pathamari, Block- Thakurganj, District- Kishanganj, Bihar-855116.

... .. Petitioner/s

Versus

1. The Union of India through the Ministry of Ayush, Government of India, New Delhi, 110058.
2. The Director, Redressal Cell, Ministry of Ayush, Government of India, New Delhi.
3. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
4. The Additional Chief Secretary, Health Department, Government of Bihar, Patna.
5. The Secretary, Health Department, Government of Bihar, Patna.
6. The Bihar Combined Entrance Competitive Examination Board (BCECEB), Government of Bihar, Patna.
7. The Controller of Examination, BCECEB (PGMAC, AYUSH), Government of Bihar, Patna.
8. The Principal, Rajkiya Ayurvedic Colleges and Hospital, Bihar, Patna.
9. The Revenue Officer, Circle- Thakurganj, District- Kishanganj, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pankaj Kumar Singh, Adv
For the Respondent/s	:	Ms. Punam Kumari Singh, Adv
		Mr. Vaibhav Kumar Jha, Adv
For the R.No.8	:	Mr. Manish Jha, Adv
For the R.Nos.6 & &	:	Mr. Prasoon Sinha, Adv

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV



Date : -27-08-2024

Re:- I.A. No.1 of 2023

The present I.A. No.01/2023 has been filed on behalf of the petitioner to add the additional reliefs as mentioned in paragraph-1 of this application.

Having heard learned counsel for the parties, as the present Interlocutory Application being formal in nature, is not opposed, and hence is allowed.

The Registry is directed to add the additional prayer made in paragraph 1 of the present petition to the prayer portion of the main writ petition.

Accordingly, I.A. No.1/2023 is hereby stands disposed of.

Re:- C.W.J.C. No.16522 of 2023

Heard learned counsel for the petitioner and learned counsels for the respondents.

2. The present writ application has been filed by the petitioner for the following reliefs:-

(i) For quashing the notice published by the BCECEB (PGMAC)-2023 vide Adv. No. BCECEB(PGMAC)- 2023/08 on 07.11.2023 issued by the controller of examination.

(ii) For quashing the further notice published by the BCECEB (PGMAC) vide Adv. No.BCECEB



[PGMAC (Ayush)] - 2023/10 on 17.11.2023 issued by the controller of examination for the purposes of appearing in the 2nd offline counselling of admission.

(iii) For issuing a direction to the respondent authorities to stay the offline second counselling process which is about to be held on 29.11.2023 for the purposes of admission to the First Year of the MD/MS (Ayurveda) courses and further directing the respondent no.7 to issue a fresh notice relaxing the condition mentioned in clause-14 of para-8 of the notice dated 17.11.2023 issued vide Adv. No. BCECEB [PGMAC (Ayush)-2023/10 and the second conditions mentioned in para-17 of the notice dated 07.11.2023 published vide Adv. No. BCECEB (PGMAC)- 2023/08.”

(iv) For directing the respondent no.6 to produce on record the list of students who has been given admission after allotment of seat in the first round of offline counselling for admission held on 09.11.2023 and on production the same may be quashed.

(v) For directing the respondent no.6 to allow the petitioner to participate in the counselling process for admission in the First Year of MD/MS (Ayurveda) courses and seat may be allotted to the petitioner on the basis of the rank card issued to the petitioner by BCECEB (PGMAC) [Ayush].

(vi) For directing the respondent no.6 for giving admission to the petitioner on the basis of seat



allotted to the petitioner after the 2nd round offline counselling held on 29.11.2023 as announced vide Adv.No.BCECEB(PGMAC)-2023/10 on 17.11.2023 and vide Adv. No. BCECEB(PGMAC)-2023/16 on 27.11.2023.

(vii) For a declaration that the “Rule of the Game cannot be changed Mid-way” in view of the law laid down by the Hon’ble Supreme court in the case of “K Manjusree vs. State of Andhra Pradesh and another” since reported in (2008) 3 SCC 512.

(viii) For a further declaration that the principal of the college from where the petitioner had passed his final BAMS is not the competent authority to “decide the domicile status of the petitioner” and in fact it is the revenue officer who is the competent authority to grant the residential certificate as authorized by the Government of Bihar in this regard.

(ix) For issuance of other writ/order/direction for which the petitioner is entitled under the facts and circumstances of the case.

3. The brief fact of the case is that the petitioner passed his final BAMS from Guru Govind Singh Indraprastha University, Delhi and accordingly, a provisional certificate was issued in favor of the petitioner declaring him eligible for the award of AYURVEDACHARYA (Bachelor of Ayurvedic Medicine and Surgery-B.A.M.S.) degree in the year 2023 as per university rules (Annexure-P1). After clearing his final BAMS from



Delhi, he appeared for All India Ayush Post Graduate Entrance Test (AIAPGET-2023) which was held on 31.07.2023 and in the aforesaid examination, he secured an all India rank of 4855.

4. The detailed notice was published by the respondent no.7 vide Adv. No.-BCECEB [PGMAC(Ayush)]-2023/03 on dated 26.10.2023 for the purposes of fresh registration and submission of online application form and the interested qualified candidates were invited on the basis of AIAPGET-2023(Ayurveda) for appearing in the counseling process of PGMAC (Ayush)-2023 for MD/MS (Ayurveda) in order to select candidates for admission to the first year of the said course (annexure-P3).

5. Pursuant to the aforementioned notice dated- 26.10.2023 the petitioner had filled an online application form for participating in post graduate medical admission counselling 2023 for the purposes of admission to MD(Ayurveda) courses in Bihar State Govt./Private colleges for the session 2023 on the basis of AIAPGET-2023 whereby and whereunder the petitioner had mentioned in the column 14 of the said online application form as the "permanent resident of Bihar" because the petitioner was having relevant document issued by the competent authority which shows the domicile of the petitioner



as the "permanent resident of Bihar" (Annexure-P4).

6. After the scrutiny of the online application form filled by the petitioner a rank card of PGMAC (Ayush) [Ayurveda]-2023 was issued in name of the petitioner by the Bihar Combined Entrance Competitive Examination Board (BCECEB) whereby and whereunder the petitioner had secured a category wise state rank of 30 in the state of Bihar in the unreserved category and accordingly he was declared eligible for participating in the counselling process for admission in the Govt & Pvt [Ayurveda] -2023 colleges (Annexure-P5).

7. Pursuant to the issuance of rank card to the candidates based on their merits the respondent no.7 had published a notice dated 07.11.2023 vide Adv. No-BCECEB (PGMAC)-2023/08 for the purposes of inviting candidates who have been found eligible to participate in the counseling process to be held on 09.11.2023 for admissions to the first year of MD/MS (Ayurveda) courses and according to the aforesaid notice, the petitioner PGMAC [Ayush] ID-(9233000005) had been mentioned in the notice in the list of unreserved category and he was invited to be present during the counseling programme along with the relevant documents on 09.11.2023 (Annexure-P6).



8. After the first round of counseling was completed and seat was allotted to the respective candidates but unfortunately the petitioner could not be allotted a seat because only the candidates to the category wise state rank of 29th in the unreserved category had been allotted a seat in the first round of counseling but the petitioner rank was 30th and hence he could not be allotted a seat.

9. After the allotment of seat to the successful candidate in the first round of counselling, the candidates were told to submit the residential certificate issued by the competent authority as also the certificate from the head of the institution where the candidate studied last mentioning permanent residence as "State of Bihar" as per the admission register(for candidates passing final BAMS from outside the state of Bihar) along with the other relevant documents.

10. The petitioner had given a detailed representation dated 17.11.2023, before the controller of examination, BCECEB, Government of Bihar, Patna stating that the petitioner had relevant documents which proves the domicile status of the petitioner as "State of Bihar" but inadvertently he had mentioned the correspondence as well as the permanent resident as "Delhi" in the admission register of the institution



from where he passed his final BAMS because the petitioner had moved to Delhi for the purpose of his education and he further requested the respondent no-7 to allow him to participate in the counselling process and admission be given to him after allotment of seat on the basis of his "rank card" and relevant documents produced by the petitioner but unfortunately the petitioner application was not responded by the respondent no-7 (Annexure-P7).

11. Again on the same date after the petitioner had submitted his representation a notice was published by the BCECEB in the night under the signature of respondent no-7 issued vide Adv. No.-BCECEB [PGMAC(Ayush)]-2023/10 on dated 17.11.2023 for the purposes of 2nd round offline counselling to be held on 29.11.2023 to the first year of the Post Graduate Medical Admission counselling [PGMAC(Ayush)]-2023 for MD/MS(Ayurveda) degree courses and again in clause-14 of para no -8 of the said notice the same condition had been mentioned that the candidates along with the residential certificate issued by the competent authority he had to produce certificate issued by the head of the institution mentioning his permanent resident as state of Bihar in the admission register of the said institution (Annexure-P8).



12. Learned counsel for the petitioner submits that because of the afore-mentioned condition in the notice dated-07.11.2023 and 17.11.2023 issued by the BCECEB, many candidates have been barred from participating in the counselling process for admission even after filling of the online application form and despite of having relevant documents issued by the competent authority which shows the domicile status of the candidates as "permanent resident of Bihar". The father of the petitioner namely late-Sher Mohammad @ Sher Alam was also the permanent resident of the State of Bihar which is evident from the death certificate of the father of the petitioner issued by the Department of Planning and Development, Government of Bihar on 30.08.2017. The land receipt issued in the name of the petitioner's father and his uncle on 12.10.2021 further proves that the petitioner's father was the resident of circle-Thakurganj, District-Kishanganj, Bihar.

13. Petitioner challenged the second condition mentioned in clause 14 of para no.8 of notice dated -17.11.2023 (Annexure-P-8) issued by the respondent no.6 for the purposes of inviting candidate for 2nd round offline counselling to be held on 29.11.2023 for admission to the first year of the Post Graduate



Medical Admission Counselling [PGMAC(Ayush)]- 2023 whereby and whereunder it was stated that "A candidate also has to produce certificate from the head of the institution where he studied last mentioning permanent residence as per the admission register".

14. It is submitted that it is a settled principle of law that the "Rule of the Game cannot be changed Mid-way" in view of the law laid down by the Hon'ble Supreme Court in **K. Manjushree vs State of Andhra Pradesh (2008) 2 S.C.R. 1025.**

15. The petitioner had submitted a detailed representation before the respondent no.7 on 17.11.2023 which was duly received by the office on the same date and in the said representation, the petitioner had categorically requested the respondent no.7 to allow the petitioner to participate in the 2nd round offline counselling about to be held on 29.11.2023 and relax the afore-mentioned second condition as the said condition cannot be said to be sustainable in the eyes of laws on the ground that "Admission register of the institution is not a valid document which proves the domicile status of candidate" if the candidate has other relevant documents issued by the competent authority which proves the domicile status of



a candidate as a State of Bihar.

16. Surprisingly notice dated- 17.11.2023 was withdrawn by the respondent BCECEB (PGMAC) and a revised notice was issued by the BCECEB Board vide notice dated- 27.11.2023 (Annexure-P-13 of the Interlocutory Application filed by the petitioner) for the purposes of inviting candidates for the 2nd round offline counselling to be held on 29.11.2023 for admissions to the first year of MD/MS (Ayurveda) based on the merit of All India Ayush Post Graduate Entrance Test (AIAPGET)-2023.

17. The said notice dated 27.11.2023 the afore-mentioned second condition was withdrawn by the BCECEB and only residential certificate from the competent authority was demanded from the candidates for the purposes of determination of domicile status of a candidate which could be evident from the sub-clause (v) of clause -16 of the notice dated-27.11.2023 and also on the ground that the Principal of the college is not the competent authority to grant such residential certificate. Since the petitioner was having the residential certificate issued by the revenue officer who is the competent authority in this regard, the petitioner had participated in the 2nd round counselling held on 29.11.2023



along with all the required documents as per the requirements of the said notice dated 27.11.2023 and accordingly the seat was also allotted to the petitioner on 29.11.2023.

18. After the allotment of the seat to the petitioner, surprisingly the respondent no. 6 had demanded the additional certificate from the petitioner and an undertaking was taken from the petitioner that he should bring certificate from the principal of the college regarding the permanent address of the petitioner by 02.12.2023 at 3.00 P.M at BCECEB Board office. The petitioner under the compulsion of the BCECEB Board officer had to give the undertaking in this regard on 29.11.2023 although it was not voluntary rather under the compulsion of the officer conducting the counselling who pressurized the petitioner to sign the undertaking otherwise the seat allotted to the petitioner would be transferred to some other candidate.

19. It is submitted that the demand of the certificate from the principal of a college about the permanent address of the petitioner was itself illegal as the aforesaid document was not in the list of documents required to be brought by the petitioner on the date of 2nd counselling in view of sub-clause (v) of clause 16 of the notice dated-27.11.2023. That it is relevant to mention that revised notice dated- 27.11.2023 would be



applicable to the petitioner and not the notice dated-17.11.2023 as the notice dated-27.11.2023 was in tune with the spirit of the original notice dated- 26.10.2023 in which only residential certificate from the competent authority was required who is the revenue officer in the State of Bihar.

20. It is submitted that the 3rd round offline counseling was held on 11.12.2023 and the seat of the petitioner was also reserved till 3rd counseling but surprisingly the seat of the petitioner was opened on 12.12.2023 without any notice to the petitioner and the petitioner was denied admission simply on the technical ground that "He had mentioned his correspondence address as Delhi in the admission register of the institution in Delhi from where he passed his final BAMS".

21. Learned counsel for the petitioner relied upon the judgment of the Apex Court passed on 02.01.2024 in the case of **Vashist Narayan Kumar Versus The State of Bihar & Ors. [Civil Appeal No.01 of 2024 (arising out of SLP (C) No.12230 of 2023)]** at para-25, it has been stated that **“A Writ Court has the power to mould the relief. Justice cannot be forsaken on the altar of technicalities”**.

22. Reliance has also been placed upon the judgments passed in the case of



**1) K Manjusree vs. State of Andhra Pradesh & Anr;
Appeal (Civil) (2008) 2 SCR 1025 1313 of 2008; para-23, 24,
29, 30, 35(ii)**

“23. As far as the first change is concerned, we have already held that scaling down in unexceptional as it is in consonance with the criteria decided by the Administrative Committee on 30.11.2004 before commencing the selection process.

24. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them P.K. Ramachandra Iyer v. Union of India



1984 (2) SCC 141 Umesh Chandra Shukla v. Union of India 1985 (3) SCC 721 and Durgacharan Misra v. State of Orissa 1987 (4) SCC 646.

29. The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement



that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.

30. It was submitted that Administrative Committee and Interview Committee were only delegates of the Full Court and the Full Court has the absolute power to determine or regulate the process of selection and it has also the power and authority to modify the decisions of the Administrative Committee. There can be no doubt about the proposition. The Administrative Committee being only a delegate of the Full Court, all decisions and resolutions of Administrative Committee are placed before the Full Court for its approval and the Full Court may approve, modify or reverse any decision of the Administrative Committee. For example when the resolution dated 30.11.2004 was passed it was open to the Full Court, before the process of selection began, to either specifically introduce a provision that there should be minimum marks for interviews, or prescribe a different ratio of marks instead of 75 for written examination and 25 for interview, or even delete the entire requirement of minimum marks even for the written examination. But that was not done. The Full Court allowed the Administrative Committee to determine the



method and manner of selection and also allowed it to conduct the examination and interviews with reference to the method and manner determined by the Administrative Committee.

35(ii) The civil appeal filed by K. Manjusree is allowed and the judgment of the High Court is set aside. The High Court is directed to prepare a fresh merit list in regard to 83 candidates with reference to their marks in written test and interview without applying any minimum marks for interviews and thereafter finalise the selections in accordance with law.”

**2) Vansh S/o Prakash Dolas vs. The Ministry of Education & The Ministry of Health & Family Welfare & Ors. (Arising out of SLP (C)No(s).26179-26180 of 2023);
Para relied upon- 27, 28, 29, 30, 31, 32:-**

“27. This Court in the case of S. Krishna Sradha v. State of Andhra Pradesh and Others examined the issue of wrongful denial of admission in a medical course, and propounded the theory of ‘restitutive justice’ by holding as below:-

“13. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and



so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

13.1. That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the court concerned to dispose of the proceedings by giving priority and at the earliest.

13.2. Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed – 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or



two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

13.3. In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and



without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

13.4. Grant of the compensation could be an additional remedy but not a substitute for restitutorial remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

13.5. It is clarified that the aforesaid directions pertain to Admission in MBBS Course only and we have not dealt with



post graduate medical course.” (emphasis supplied)

28. *In the light of the above judgment, it would neither be desirable nor justifiable to grant admission to the appellant in the on-going session of the MBBS(UG) course. However, considering the fact that the order cancelling the admission of the appellant herein was issued on 9th August, 2023 and the writ petition came to be filed before the High Court promptly i.e. on 10th August, 2023, without any delay whatsoever, the appellant is entitled to restoration of his seat in the first year of MBBS(UG) course in the same college in the next session, i.e., NEET UG-2024.*

29. *We further direct that until a suitable rectification is made in the guidelines/rules, candidate(s) domicile of the State of Maharashtra having acquired SSC and/or HSC qualification from any recognized institution: -*

(i) Whose parent(s) are domiciles of Maharashtra and employed in the Central Government or its Undertaking, defence services and/or in paramilitary forces viz. CRPF, BSF, etc. and;

(ii) Such parent(s) are posted at any place in the country as on the last date of document verification, shall be entitled for a seat in MBBS Course in the Maharashtra



State quota.

30. It is further directed that the appellant shall be provided admission in the 'OBC category domicile of State of Maharashtra child of person serving the Government of India' in the first year of the MBBS(UG) course commencing from the year 2024 by creating an additional seat so as to ensure that there is no reduction in the quota of seats to the candidates who succeed in the NEET UG- 2024.

31. The impugned orders are set aside. The appeals are accordingly allowed.

32. We also direct respondent No.6-College and respondent No.5- State of Maharashtra to pay compensation to the tune of Rs.1 lakh(Rs. 50,000/- each) to the appellant for the deprivation of one year and harassment on the account of illegal and arbitrary cancellation of his admission.”

3) S. Krishna Sradha vs. The State of Andhra Pradesh & Ors. AIR 2020 SC 47; Civil Appeal No.1081 of 2017 (para-9, 9(iv)):-

“9. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time



and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her.

9(iv) Grant of the compensation could be an additional remedy but not a substitute for restitutional remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.”

23. A counter-affidavit is filed on behalf of the BCECEB, whereby, it is stated that the matter relates to admission of the petitioner in Post Graduate Ayurveda Course against 50% open seats under State Quota, on the basis of the result published by the All India Ayush Post Graduate Entrance Test-2023 (hereinafter referred to as "AIAPGET-2023") and the counselling thereof was entrusted to the Bihar Combined Entrance Competitive Examination Board, Patna (hereinafter referred to as the "BCECE Board") for allotment of seats to the successful candidates on the basis of merit-cum-choice of the candidates.

24. A draft of the prospectus was prepared by the BCECE Board for conducting counselling in order to allotment of seats to the successful candidates of PGMAC(Ayush)-2023 for



MD(Homeopath), PGMAC(Ayush)-2023 for MD (Ayurveda) and PG(Ayush)-2023 for MD(Unani) and sent to the Health Department, Govt. of Bihar by Annexure-R6/A to the counter affidavit under the signature of the OSD, BCECE Board for grant of approval.

25. Learned counsel for the respondent nos.6 and 7 submits that approval was granted by Annexure-R6/B to the counter affidavit by the Department of Health, Govt. of Bihar with some amendments in the draft of the prospectus, thereafter the prospectus was published Annexure-R6/K to the counter affidavit. A notice was published (Annexure-R6/D to the counter affidavit by the BCECE Board) inviting fresh registration and online application form from the interested qualified candidates to appear in the Post Graduate Medical Admission Counselling for MD/MS(Ayurveda), in order to select candidates in the first year of the Post Graduate Degree courses. Besides in the said notice the procedure for submission of online applications form was prescribed, and; pursuant thereto online applications were submitted by the candidates.

26. Letter no. 1107 dated 07.11.2023 was issued under the signature of the Officer on Special Duty, Health Department,



Govt. of Bihar, to the OSD, BCECE Board (Annexure-R6/E to the counter affidavit) enclosing the application signed by 23 graduate students, alleging inter-alia that during the counselling of post graduate courses, students from other states were taking admission in PGMAC(Ayush) for MD(Ayurveda) in the institutions of the State of Bihar by obtaining fake residential certificates, whereas guidelines have been issued letter no. 296(A.Chi.) dated 20.03.2023 by the Health Department, Govt. of Bihar, providing thereby that only those candidates who are permanent residents of Bihar are eligible for admission against 50% open seats.

27. Notice dated 07.11.2023 was published (Annexure-R6/F to the counter affidavit) and the candidates were informed about the date of counselling for admission besides in Clause-17 of the said notice it was provided:

"The candidates must note that he/she has to produce Residential Certificates issued by the competent authority and also Certificate from the Head of the Institution where the candidate studied last mentioning permanent residence as per the admission register (for candidates passing final BAMS from outside the state of Bihar), otherwise he/she will not be allotted seat. No time will be given for submitting both the above Certificates".



28. In this connection a meeting was also convened in which the following officials were present and participated:

- (1) OSD, BCECE Board, Patna
- (ii) Director (Homeo)-cum-Nodal Officer (Ayush)
Health Department, Govt. of Bihar, Patna
- (iii) Director (Ayurved)
Health Department, Govt. of Bihar, Patna
- (iv) Principal
Government Ayurvedic College, Patna.
- (v) Principal,
Government R.B.T.S.H.M.C.H, Muzaffapur.
- (vi) Principal,
Government Tibbi College, Patna

29. It has been mentioned in paragraph no.4 of the minutes of the said meeting that it was resolved that only those candidates who are permanent residents of Bihar would be eligible for admission against 50% open seats as notified by letter no. 296 dated 20.03.2023 issued by the Health Department Govt. of Bihar, and the candidates will have to produce a copy of their permanent address as furnished by them while undergoing bachelor course, duly attested by Director/Principal of those institutions. It was further resolved that if any candidate, for some avoidable reasons is not able to produce residential certificate from the previous college,



his/her seats shall be blocked and time will be granted to participate in the 2nd round counselling and if the residential Certificate is not produced by the candidate within the time provided to him/her, admission would be cancelled and the aforesaid seat shall be considered as a vacant seat and shall be opened for the next round of counselling (Annexure-R6/G to the counter affidavit).

30. The petitioner having PGMAC(Ayush) ID No.9233000005, merit rank-30 participated in the 1st counselling on 09.11.2023, and since during the counselling no seat was available as per his merit-cum-choice he had opted for NVC and he had withdrawn all original certificates/documents submitted by him (Annexure-R6/H to the counter affidavit).

31. The petitioner appeared in the 2nd counselling on 29.11.2023 and he was allotted seat in Government Ayurvedic College, Patna on his merit rank-30. However, petitioner did not produce his residential certificate issued by the Principal/Director of his previous institute from where he has passed his graduation course, accordingly the seat allotted to him was blocked and time was granted till 02.12.2023 for producing the residential certificate from his previous college (Annexure-R6/I to the counter affidavit).



32. The petitioner submitted his residential certificate issued by his previous college from where he has done graduation in which the address of the petitioner was is mentioned as C295/4, Rajeev Nagar, Mandoli, New Delhi-110095.

Therefore, admission could not be granted to the petitioner in the light of the decision taken unanimously in the meeting convened on 09.11.2023 on the issue as contained in paragraph no.4 of the minutes of the meeting (Annexure-R6/G to the counter affidavit).

33. Initially the seat was allotted to the petitioner in Government Ayurvedic College, Patna on his merit rank 30 on the basis of the 2nd round of counselling. The Principal of the aforesaid college has been impleaded as Respondent no.8 in the aforesaid writ petition and he has filed his counter affidavit. In paragraph no. 8 of his counter affidavit respondent no.8 has categorically stated that out of the total 77 seats only 74 students were admitted in the post graduate courses and the 3 seats are still vacant in the aforesaid college.

34. The petitioner has relied on a judgment of the Apex Court in the matter of ***S. Krishna Sradha V/s The State of Andhra Pradesh & Ors.*** delivered in Civil Appeal No.1081 of 2017 dated 13.12.2019, wherein the Hon'ble Apex Court have



categorically mentioned in paragraph no. 9 (v) in the said judgment as quoted hereunder:

"It is clarified that the aforesaid directions pertain for in MBBS course only and we have not dealt with Post Graduate Medical course."

35. Admittedly, the writ petition filed by the petitioner is related with admission in Post Graduate Ayurveda Course, therefore the directions issued by the Apex Court will not be applicable in the case of the petitioner.

36. Changing the rules of the game after the game was played which is clearly impermissible. In the present case, the concerned respondent had initially issued a notice of advertisement vide Advt. No.- BCECEB [PGMAC (Ayush)]- 2023/03 dated 26.10.2023 based on which the petitioner filled up the application form along with requisite documents. Later, the respective respondent again issued revised/amended notices of advertisement vide Advt. No. - BCECEB (PGMAC)- 2023/08 dated 07.01.2023; Advt. No.- BCECEB [PGMAC (Ayush)]- 2023/10 dated 17.11.2023; and Advt. No. BCECEB [PGMAC]- 2023/16 dated 27.11.2023 were issued under the signature of respondent no.7. After going through all the aforementioned documents it is pertinent to note here that all



the aforesaid notices issued on 07.01.2023, 17.11.2023 and 27.11.2023 under the signature of Respondent no.7 prima facie shows certain varying averments with respect to “Residential Certificate”. Following are the points quoted in the respective notices-

Advt. No.- BCECEB [PGMAC (Ayush)]- 2023/03 dated 26.10.2023

[NOTICE]

In point no.04 -

All the certificates included in the list given below, if applicable, must be submitted in original by every candidate at the time of his/her counselling/allotment on the schedule date:

(v) Residential Certificate

Advt. No.- BCECEB [PGMAC]- 2023/08 dated 07.01.2023 [NOTICE]

In point no.16-

All the certificates included in the list given below, if applicable, must be submitted in original by every candidate at the time of his/her counselling/allotment on the schedule date:

(v) Residential Certificate

In point no.17-

The candidates must note that he/she has to produce Residential Certificates issued by the competent authority and also certificate from the head of the institution where the candidate studied last mentioning permanent residence as per



the admission register (for candidates passing final BAMS from outside the State of Bihar), otherwise he/she will not be allotted seat. No time will be given for submitting both the above certificates.

Advt. No.- BCECEB [PGMAC (Ayush)]- 2023/10 dated 17.11.2023
[NOTICE]

In point no.08-

All the certificates included in the list given below, if applicable, must be submitted in original by every candidate at the time of his/her counselling/allotment on the schedule date:

(v) Residential Certificate

(xiv) The candidates must note that he/she has to produce Residential Certificate issued by the competent authority and also certificate from the head of the Institution where the candidate studied last mentioning permanent residence as per the admission register (for candidates passing final BAMS from outside the State of Bihar).

Advt. No.- BCECEB [PGMAC]- 2023/16 dated 27.11.2023 [NOTICE for
2nd Counselling]

In point no.16-

All the certificates included in the list given below, if applicable, must be submitted in original by every candidate at the time of his/her counselling/allotment on the schedule date:



(v) Residential Certificate

37. According to the notice dated 17.11.2023, the offline 2nd counselling was scheduled for 29.11.2023, which required the petitioner to attend. This notice as well as notice dated 07.11.2023 included detailed specifications about the “Residential Certificate”. However, they provided similar detailed information about the requirements. Additionally, since the petitioner was expected to attend the 2nd counselling on 29.11.2023- just two days after the notice dated 27.11.2023- it would have been challenging for the petitioner to arrange the necessary documents on such short notice. The frequent changes in the specifications for the admission process have also caused significant confusion and doubt for the petitioner. Accordingly, the respondent failed to provide adequate information about the “Residential Certificate” and related issues, which impacted the petitioner’s admission. So, in line with the Supreme Court’s ruling in **K. Manjushree vs. State of Andhra Pradesh and Anr., (2008) 3 SCC 512**, which states that “a rule of the game cannot be changed mid-way,” and in the present case it is evident that the respondent’s frequent changes to the requirements for the “Residential Certificate” are arbitrary, unreasonable and unlawful.



38. The grant of the compensation may be an additional remedy but not a substitute for restitutional remedy. Given the facts and circumstances of this case, I direct respondent no.3/ State of Bihar to pay the petitioner Rs.50,000/- (Rupees Fifty Thousand) as compensation for the one-year deprivation and harassment caused by the unlawful and arbitrary denial of his admission. This payment should be made within eight weeks from the date of receipt/production of a copy of this order. Further, the session of college has already been started and 7-8 months had been elapsed, therefore, this Court is not in position to direct the respondent to intake him in the current/present session, nor can it direct the respondent authorities to reserve a seat for the petitioner in the next academic session.

39. Accordingly, this writ application shall stand disposed of.

(Anjani Kumar Sharan, J)

shikha/-

AFR/NAFR	NAFR
CAV DATE	01.08.2024
Uploading Date	27.08.2024
Transmission Date	NA

