



\$~J-1

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 17th July, 2026
Pronounced on: 29th July, 2026

+ LPA 438/2025

NATIONAL BOARD OF EXAMINATIONS IN MEDICAL SCIENCESAppellant

Through: Mr. Waize Ali Noor, Mr. Mrinal Kumar Sharma & Mr. Zillur Rahman, Advs.

versus

DR. ADITI PANWAR AND OTHERSRespondents

Through: Mr. Amarjit Singh Bedi, Mr. Varun Chandiok, Ms. Riya Sethi & Mr. Armaan Sharma, Advs. for R1.
 Mr. Amit Meharia, Mr. Abinash Agarwal, Ms. Priya Bhalerao & Mr. Vibhor Victor, Advs. for NMC.
 Mr. Mukul Singh, CGSC for UOI.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
JUDGMENT

Per DINESH MEHTA, J.

1. This matter has come up before this Court, pursuant to order of Hon'ble the Chief Justice in furtherance of a reference made by a Division Bench, consequent to a split verdict dated 18.05.2026. The Division Bench has referred the following question:

“Whether the learned Single Judge was correct in his decision to direct de-reservation of the Radiodiagnosis seat in the Government Hospital Panchkula, which was reserved for an OBC category candidate, and to throw



it open to Unreserved category candidates, in the facts of the present case, keeping in mind the legal position?”

2. The facts narrated in a nutshell are that the respondent no.1- Dr. Aditi Panwar (hereinafter referred to as ‘writ petitioner’) completed her Bachelor of Medicine, Bachelor of Surgery (MBBS) and Post Graduate Diploma in Radio-diagnosis. The appellant-National Board of Examinations in Medical Sciences (hereinafter referred to as ‘NBEMS’) issued a notification dated 28.01.2025 for filling up seats of two years PG Course or DNB (Post Diploma Course).
3. The writ petitioner, being an unreserved category candidate, appeared for the written test commonly known as Diplomat of National Board - Post Diploma Centralized Entrance Test 2025 (hereinafter referred to as ‘DNB PDCET’) and secured 142nd rank in Radio-Diagnosis.
4. The seat matrix for admission to DNB (Post Diploma Course), 2025 came to be published which reflected one seat of Radio-Diagnosis in respondent no.3- General Hospital, Sector 6, Panchkula, Haryana, earmarked for Other Backward Classes (hereinafter referred to as ‘OBC’) candidates. According to the respondent no.1/writ petitioner, though the seat was reserved for OBC candidates.
5. According to the respondent no.1, since no OBC candidate was able to clear the exam in Radio-Diagnosis branch and seat of such hospital was lying vacant for last five to six years, despite being a general category candidate, she furnished her option qua the seat in respondent no.3-hospital.
6. She was, however, allotted admission in IVY Health and Life Science, Punjab (hereinafter referred to as ‘IVY’) and not in respondent no.3/hospital,



while the seat in respondent no.3 remained unallotted/vacant. Respondent no.1 then made a representation which remained unheeded, for which the writ petition came to be filed seeking a mandamus that the NBEMS be directed to de-reserve the seat in respondent no.3 from OBC category to open category and give her admission.

7. The NBEMS objected to prayers made by the respondent no.1/writ petitioner on various counts, including the ground that Clause 4.6 of the Handbook Centralized Merit Based Counselling for Admission to Post Diploma DNB Courses (2025 Admission Session) (hereinafter referred to as '*handbook*') prohibited conversion of any vacant seat from one reserved category to another reserved category and as per the Minutes of Meeting of NBEMS 15th Accreditation Committee Meeting (hereinafter referred to as '*the minutes of the 15th meeting*') dated 09.08.2024, the vacant DNB seats would go to three years PG Course or DNB (Post MBBS Course).

8. The learned Single Judge vide judgment dated 16.06.2025 allowed the writ petition and directed the NBEMS to convert the OBC seat in respondent no.3/hospital to unreserved category and offer the same to all candidates including the petitioner in order of merit who have given preference for seat in respondent no.3/hospital.

9. Against the said judgment passed by the learned Single Judge, the NBEMS preferred an intra-Court appeal, which was heard by a Division Bench on 24.02.2026 and judgment was pronounced on 18.05.2026, but both the Judges had divergence of opinion. One Judge agreed with the view taken by learned Single Judge albeit with a small modification, while the other Judge disapproved the view taken by the learned Single Judge and held that



the writ petition filed by the respondent no.1/writ petitioner was liable to be dismissed.

10. Mr. Waize Ali Noor, learned counsel for the appellant-NBEMS, having apprised the Court about the brasstacks facts, highlighted that knowing it fully well that the seat in respondent no.3/hospital was meant for an OBC candidate, the respondent no.1/writ petitioner opted for the same as her first preference while giving IVY as second option. He submitted that the appellant committed no error of law in allotting the respondent no.1/writ petitioner IVY as opted by her. He argued that Clause 4.6 of the handbook, in no ambiguous terms, provided that no vacant seat of reserved category shall be converted to another category. And since the seat in respondent no.3/hospital was reserved for an OBC candidate, the respondent no.1/writ petitioner could not have applied for the said hospital and even if she had applied, she could not have claimed her admission in the hospital.

11. He further argued that the respondent no.1/writ petitioner's writ petition and the prayers made therein that the seat be de-reserved was not only misconceived but also was not maintainable. He added that it was not within the domain of NBEMS to de-reserve the seat, as the reservation of seats was done and is required to be done by the State Government. He argued that even if it were to be done by the State of Haryana, it could not have been done after the process had started. He argued that simply because a seat had remained unfilled/vacant, cannot be a ground to de-reserve a seat.

12. Learned counsel for the appellant invited Court's attention towards the minutes of the 15th meeting of the Accreditation Committee dated 09.08.2024 and underscored that as per the decision taken by the Accreditation



Committee, vacant seats would go to three year PG Course of post MBBS pool and therefore, the respondent no.1/writ petitioner's argument that the seat would go waste is factually wrong and legally untenable. He argued that the learned Single Judge so also the Hon'ble Judge concurring with the learned Single Judge both were swayed by the fact that the seat would go waste or had gone waste, but the same cannot always be a valid consideration.

13. He further argued the Hon'ble Judge disagreeing with the view taken by the learned Single Judge has given cogent reasons, as to why the writ petition deserves dismissal and why should the seat be not de-reserved. He contended that the de-reservation lies entirely in the Executive domain and the High Court cannot issue any direction to de-reserve the seat and allot it to the respondent no.1/writ petitioner.

14. Mr. Amarjit Singh Bedi, learned counsel for the respondent no.1/writ petitioner, on the other hand submitted that the learned Single Judge has rightly allowed the writ petition preferred by the respondent no.1/writ petitioner. While highlighting that one seat is lying unfilled for the respondent no.1/writ petitioner. He prayed that the appeal be dismissed and the NBEMS be directed to carry out the directions given by the learned Single Judge as modified by Hon'ble Om Prakash Shukla, J.. He submitted that admittedly no OBC candidate was able to clear the DNB PDCET for Radio-Diagnosis and therefore, the seats meant for OBC candidate(s) was/were bound to remain vacant.

15. He added that having conceived or realised such situation, the respondent no.1/writ petitioner had applied for a seat in respondent no.3/hospital in a hope that good sense will prevail over the appellant and



realising that the seat would go waste, they will allot the same to her. He submitted that that despite respondent no.1/writ petitioner's representation and persuasion, the appellant did not allot the same to her for which she had to come in the shelter of this Court, which fortunately came to her rescue and directed the appellant to de-reserve the seat.

16. Relying upon the judgment of the Himachal Pradesh High Court rendered in **CWP No.1992/2017** titled ***Archana Thakur v. State of Himachal Pradesh and Ors.*** on 12.08.2018, he argued that seat remaining vacant works to nobody's advantage and is a loss of national resource. He added that if the NBEMS did not have the power to de-reserve the seat, it could have asked the State of Haryana to de-reserve the seat and offer it to general category candidates as directed by learned Single Judge.

17. In response to the arguments of learned counsel for the appellant about the minutes of the 15th Accreditation Committee Meeting dated 09.08.2024, learned counsel for respondent no.1 argued that 'so called' decision is an internal affair and the same was never published in the handbook. He argued that had such information been published, the respondent no.1/writ petitioner would have challenged the same being arbitrary.

18. Mr. Bedi, learned counsel for respondent no.1/writ petitioner, invited Court's attention towards relevant part of the judgment dated 16.06.2025 passed by the learned Single Judge and that of Hon'ble Judge concurring with the view of the learned Single Judge to contend that strict principles of reservation, as applicable in service jurisprudence should not apply, when it comes to reservation in the case of admission in educational institutions. He was, however, not in a position to cite any direct law or judgment on this



issue.

19. Mr. Noor, learned counsel for the appellant, in rejoinder submitted that the decision dated 09.08.2024 taken in the 15th Accreditation Committee Meeting was not required to be given in the handbook inasmuch as the handbook only provides guidance to the applicants for the purpose of applying for the three years or two years PG/Diploma course. So far as fate of unfilled seats is concerned, it was not felt necessary to be narrated as the same cannot be a concern of a candidate, when they will fill the application/option form.

20. Heard learned counsel for the parties.

21. The first question which needs to be determined is, as to whether the respondent no.1/writ petitioner was justified in filling her option for respondent no.3/hospital. Concededly, said seat was earmarked for OBC category candidate and the writ petitioner is a general/unreserved category candidate. I am of the considered opinion that when a seat is reserved for a particular category, a candidate from general category cannot stake his/her claim against such seat. Though vice-versa is permissible, a reserve category candidate may stake his/her claim against other permissible categories and the candidate is to be accommodated as per his/her own merit and consequential adjustment as per prevailing law can be made.

22. Viewed from sole angle what has been held by learned Single Judge that unfilled seat amounts to wastage of resources, appears to be correct but we have to bear in mind a larger picture that a seat can remain unfilled on account of number of factors such as:

- i. No candidate of such category applying for such course.



- ii. No candidate of a particular category clearing the exam/test.
- iii. No candidate applying for a particular college.
- iv. Even after applying and opting, the candidate fails to report.
- v. After reporting, the candidate fails to fulfill other eligibility criteria or there are lacunae in documents/credentials.

23. Hence, by the time the agency conducting test realizes that some seat(s) has/have fallen vacant, it can be too late. In some cases, it can be decided before hand—before the counseling commences and in other cases, it can come to notice days after the counseling is over. If the vacant seat is subsequently de-reserved and offered to general category candidate, then situation may arise that more meritorious candidate, by that time, might have opted for and/or taken admission in any other college or decided to pursue some other career option and hence, subsequent observation would hardly serve the purpose or will hardly come to the aid of those candidates who have applied against the slot(s) meant for reserved category candidate(s).

24. An important fact cannot be lost sight of that IVY is a private hospital/institution whereas the respondent no.3 is a government college, hence there may be difference in their fee structure. Apart from the fee, there may be difference in level of education, rating, infrastructure, faculty or even proximity. Many other candidates more meritorious than the respondent no.1/writ petitioner would have preferred the respondent no.3/hospital, had the same been kept open for general category candidates Since respondent no.3 - college/hospital was not available many meritorious candidates might not have opted for the same and if it is now de-reserved, the petitioner or lesser meritorious candidate will be given admission, while the candidates



securing higher merit position would not be able to secure admission in such Institution. The respondents cannot be directed to do an act which is likely to give iniquitous results or bring inequality.

25. In his operative part of the judgment, learned Single Judge has held thus:

“34. Accordingly, the OBC seats allocated to the Respondent No.3 Hospital for DNB PD for 2025 Admission Session should be converted to UR category by the Respondent No. 1 and be offered to all candidates including the Petitioner in order of merit, who have given preference for this seat of the Respondent No. 3 Hospital in either first or second round of counseling for the 2025 Admission Session.”

26. This Court is almost certain that apart from the respondent no.1/writ petitioner, there would be hardly any candidate of general category who had filled an option for respondent no.3/hospital and who is still interested, if above direction is carried out. It would be only the respondent no.1/writ petitioner who would be benefited for her fault, rather strategy of filling an option, which was otherwise not available to her.

27. Furthermore, decision dated 09.08.2024 taken in the 15th Meeting of the Accreditation Committee rules out any possibility of the seat going waste. Such seat, as per the decision of the Accreditation Committee, would go to three year PG Course. Learned Single Judge has not dealt with the issue in its correct perspective. This Court does not find any force in the argument of Mr.Bedi that since it was not given in the handbook, it could not be enforced and that had it been given he would have challenged it. Pertinently, plea of this decision dated 09.08.2024 was taken by the NBEMS in their reply, but no challenge has been laid thereto. Be that as it may, the handbook is only a



guideline for the purpose of filling application form and the same cannot be read as statute.

28. It is also pertinent to note that more than a year has elapsed since the 2025 Admission Session closed. The seat, a two-year DNB (Post Diploma) course, has remained frozen pursuant to interim order passed by this Court's on 28.07.2025. Had the respondent no.1/writ petitioner joined within that session, she would today be past its midpoint. To direct her admission at this belated stage would require her training period to be reckoned entirely afresh and would be delinked from the session for which the seat was notified. Such consideration in this court's view bears materially on whether implementing the direction at this stage would serve any purpose and whether she would be able to fulfill the attendance criteria and what will happen to the fate of the candidate who has or who is supposed to get admission for session 2026?.

29. As an upshot of the discussion foregoing, I am of the view that the question referred requires to be answered in the negative. The writ petition is, consequently, liable to be dismissed, and the appeal filed by the appellant deserves to be, and is hereby, accepted.

30. Despite having answered the question in negative, this Court would hasten to add that it cannot be laid down as an absolute rule that the Court cannot give a direction to de-reserve the unfilled seats, as has been held/observed by Hon'ble C. Hari Shankar, J.. Though in the instant case, the minutes of the 15th meeting of the Accreditation Committee dated 09.08.2024 hardly leave any scope for seats remaining vacant but since there was a huge gap between the examination of DNB (Post Diploma Course) and DNB (Post MBBS Course), it was incumbent upon the NBEMS to publish a fresh seat



matrix immediately, when they found that no OBC candidate was able to clear the examination in Radio-Diagnosis.

31. It is, therefore, ordered that the appellant-NBEMS shall henceforth take care that in case a candidate of any reserved category (OBC, Scheduled Caste, Scheduled Tribe, Persons with Disabilities, etc.) is not declared successful in any branch or lesser number of candidates than the seats reserved clear the exam, then, such number(s) of seat shall be got de-reserved after taking requisite approval from the concerned State and the same shall be filled by open category candidate. A prior or in principle decision in this regard at appropriate level be taken well in advance, so as to ensure that seats do not remain unfilled/vacant and aspiring candidates, who are willing to take admission can pursue their future studies in the institution of their choice. But once, the seat matrix has been declared and candidates have filled in their options, no direction can be given by the Court to de-reserve the seat(s.)

32. The reference stands answered/disposed of accordingly.

DINESH MEHTA
(JUDGE)

JULY 17, 2026/kk