

THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 03.08.2012

Judgment Delivered on: 21.08.2012

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+ **WP(C) No. 4042 OF 2012 & CM APPL.8471/2012, 8761/2012**

VISHED THROUGH LEGAL GUARDIAN

SUSHIL KUMAR

...APPELLANT

Through : Mr. Ramesh K. Mishra, Adv.

VERSUS

DIRECTORATE OF HIGHER EDUCATION

AND ORS.

...RESPONDENTS

Through: Ms. Anjana Gosain with Ms. Perna Shah Deo and Mr. Karan Burman, Advocates for Respondent No.1.
Ms. Avnish Ahlawat, Advocate with Ms. Latika Chaudhary, Advocate for Respondent No. 3
Mr. Mukul Talwar, Advocate with Mr. Rajesh Kumar, Advocate for Respondent No.4/GGSIPU.
Mr. Sunil Kumar, Advocate for Respondent No.5.

AND

WP(C) No. 4162 OF 2012 & CM APPL.8646/2012

MASTER ROHAN SHAD ARORA (MINOR) THROUGH:

FATHER AND NATURAL GUARDIAN AND ANR

..... Petitioners

Through: Mr. K.K. Sharma, Sr. Advocate with Mr. R.P. Agarwal, Ms. Priyadarshini Verma, Ms. Bhanita Patowary,

Advocates.

Versus

THE REGISTRAR, UNIVERSITY OF DELHI Respondent
Through: Mr. Amit Bansal and Ms. Ritika
Nagpal, Advocate for DU.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE:

1. Though in these two writ petitions, different educational institutions are involved and the factual matrix of the two cases is also at variance from each other, there is some commonality, albeit in different hue and colour. It was for this reason that both these petitions were taken together for hearing so that discussion on legal principles which are common to each other can be taken note of at one place. However, it is the application of these principles on the facts of these cases that will determine the fate of each of the petitions. Therefore, we proceed to take stock of the factual background of the two cases independently whereafter we would take note of the legal position and then consider the merits of each case, again, independently to arrive at the conclusions.

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2. The petitioner was born on 28.12.1994 in Delhi out of the wedlock of Mr.Sushil Kumar and Ms. Shashi Kanta. His father Shri Sushil Kumar is the member of NCT of Delhi domiciled Scheduled Caste. His permanent address is in NCT of Delhi. The competent authority in Delhi has issued a

caste certificate to that effect to the father of the petitioner. The aforesaid parents of the petitioner are employed in the Income Tax Department, New Delhi. The competent authority, Office of the Deputy Commissioner (New Delhi District), Delhi issued caste certificate dated 18.3.1995 to the petitioner. The certificate mentions that the petitioner or his family is the ordinary resident of Union Territory of Delhi.

3. In the year 1996, the Income Tax Department allotted a Flat No.103, T.A.-II in Vaishali, Ghaziabad, which falls under NCR to Smt. Shashi Kanta, mother of the petitioner. The allotment offer states that if Smt. Shashi Kanta or her spouse is an existing allottee of any estate office/Government accommodation in Delhi, then she would not be eligible for allotment of the same as per allotment rules. The parents/family of the petitioner shifted to the allotted accommodation as there was inconvenience in accommodation in his ancestral house in Delhi. They took possession of the said Flat on 27.12.1996.

4. In the year 1999, the schooling of the petitioner started from a nearby school in Ghaziabad named Green Field Public School, Chander Nagar, Ghaziabad. In class KG, he was admitted in Deep Memorial Public School, a senior secondary school affiliated to CBSE at Deep Vihar (Ramprastha), P.O. Chander Nagar, Ghaziabad. The petitioner as a kid was admitted in the school as it was in nearby area of their accommodation allotted by the Income Tax Department. The petitioner studied throughout in the same school and passed his Class 12th in 2012. In between the parents of the petitioner continued to be in service of Income Tax Department at New Delhi.

5. The petitioner, with intention to pursue higher education, has passed to take admission in engineering course in the respondent No.4, namely, Guru Gobind Singh Indraprastha University (hereinafter referred to as 'the IP University') as few colleges affiliated to it impart the aforesaid course. Indraprastha Institute of Information Technology and Netaji Subhash Institute of Technology (which are arrayed as respondents No.2 and 3 in the writ petition) are two such institutions affiliated to IP University. There is an All India Engineering/Agriculture Entrance Examination (AIEEE) which is a common entrance examination for admission to the aforesaid professional courses. The petitioner appeared in AIEEE-2012 exam and as per the result declared, his overall rank was 155866. The Petitioner applied for admission in B.Tech course in Indraprastha Institute of Information Technology, Delhi (IIITD) and Netaji Subhash Institute of Technology, University of Delhi (NSIT). Both these institutes admit students on the basis of their ranking in AIEEE. The petitioner also appeared in combined entrance test for admission in B.Tech (CET-2012) in IP University, Delhi. His Roll No. was 9523417. He has secured Rank 14070 in the CET.

6. According to the petitioner, he fulfils the aforesaid eligibility requirement for claiming reservation for SC category as he has the requisite SC certificate issued by the Government of NCT of Delhi. However, there is an additional requirement for claiming reservation in 85% seats reserved for candidates of NCT of Delhi region. This requirement is specified in the legislation passed by the Delhi Government which is styled as The Delhi Professional Colleges or Institutions

(Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non Exploitative Fee and other Measures to Ensure Equity And Excellence) Act, 2007 (hereinafter referred to as 'the DPCI Act'). Section 2(f) of the DPCI Act defines Delhi Candidate as, "*Delhi Candidate means a candidate who has appeared or passed the qualifying examination from a recognized school or institution situated in Delhi*". Section 2(s) defines - "*Outside Delhi Candidate*" means a candidate other than the Delhi Candidate. Section 12(1)(b) of the DPCI Act provides that, "*eighty five percent of the total seats, except the management seats, shall be allocated for Delhi students and the remaining fifteen percent seats for the outside Delhi students or such other allocation as the Government may, by notification in the official gazette, direct*". Section 12(2) provides for the reservation of reserved category. It reads:

"In the seats mentioned in sub-section (1), an institution shall reserve-

- (a) Seventeen percent seats for the candidates belonging to the Scheduled Caste category, one percent seat for the candidates belonging to the Scheduled Tribes category and such percentage of seats, for any other category including Other Backward Classes as may be prescribed;
- (b) For seats not mentioned as allocated for Delhi students in sub section (1), fifteen percent seats for candidates belonging to the Scheduled Caste category, seven and half percent seats for the candidates belonging to the Scheduled Tribes category and such percentage of seats, for any other category as may be prescribed.

Section 14 states, "*Any admission made in contravention of the provisions of this Act or the rules made thereunder, shall be void*".

7. The IP University has also issued Circular dated 4th July, 2012 clarifying the position as under:

“Sub: Admission in reserved category for academic session 2012-13

Admission will be permissible to qualified candidates in any programme in the following conditions:

1. If qualifying examination is passed from Delhi and Reservation certificate issued from Delhi for SC/ST/OBC categories, then admission is permissible under **Delhi Reserved category**.
2. If qualifying examination is passed from Outside Delhi and Reservation certificate issued anywhere in India, including Delhi for SC/ST categories, then admission is permissible under **Outside Delhi Reserved category**.
3. If Qualifying examination is passed from Delhi and Reservation certificate issued from Outside Delhi for SC/ST categories, then admission is permissible only under **Delhi General category**.
4. **For Institutes in NCR Region:-** If Qualifying examination is passed from India and reservation certificate is issued from anywhere in India then admission is permissible under **Reserved category**”.

8. Since the petitioner had his entire schooling from kindergarten to class 12th from a school in Ghaziabad, obviously he does not fulfil this requirement as per the aforesaid Act and, therefore, is not treated as a “Delhi candidate” within the meaning of Section 2(f) of the DPCI Act. Instead he is covered by the definition of “Outside Delhi candidate” as per

Section 2(s) of the DPCI Act. In nutshell, though the petitioner is stated as belonging to SC category in Delhi region, he is not treated as “Delhi candidate” as he does not fulfil the requirement contained in the DPCI Act. The respondents have, therefore, treated him as an outside Delhi candidate and are not giving him admission in 85% seats reserved for candidates of NCT of Delhi. For this reason, the petitioner has filed this writ petition impugning the provisions of DPCI Act, particularly Section 2(f) and 2(s) read with Section 12 of the DPCI Act to the extent it requires that these provisions require a candidate. “to clarify as Delhi candidate” to have passed his 11th and 12th class examination from a school situated in NCT of Delhi.

9. Submission of the petitioner is that the Apex Court in the case of *Subhash Chandra & Anr. v. Delhi Subordinate Services Selection Board & Ors.*, (2009) 15 SCC 458 has categorically held that grant of benefit of reservation for SC, ST and OBC is available only in the State of origin, where they belong and the appropriate certificate is issued to the person, for the purposes of Article 15(4) and Article 16(4) of the Constitution of India, so far as it relates to the services of the State or Union Territory for admission in an institution of State Government. It is further pointed out in that case, following the Constitution Bench judgment in *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College & Ors.*, (1990) 3 SCC 130, the Court further held that the benefit of reservation for SCs and STs who have migrated to another States or Union Territories are not available as they are not members of SCs and STs in recipient States/Union Territories. It is thus submitted that in view of this constitutional requirement, the petitioner would be eligible to get the benefit of reservation against SC

candidate only in Union Territory of Delhi from where he has got the certificate. He cannot get the benefit in any other State outside Delhi. However, because of the provisions of Section 2(f) of the Act, he is not treated as "Delhi candidate" and is put in the category of outside Delhi candidate. In this manner, he is denied the entry into the 85% quota meant for Delhi students. According to him, it has created an anomalous situation inasmuch as he is neither given reservation in Delhi nor he would be entitled to such a reservation being SC candidate in any State out of Delhi in view of the law laid down in *Subhash Chandra* (supra). This, according to him, is contrary to the constitutional mandate and renders the impugned provisions violative of Article 14 and 15 of the Constitution of India. It is also argued that due to the impugned legislation, sub classification within the class of SC has been created whereby those SCs who have not passed their qualifying examination from a school in Delhi is not permitted to avail the benefit of reservation in their State of origin or domicile. The petitioner submits that such sub division of the class SC is not permissible as per the Constitution Bench judgment of the Supreme Court in *E.V. Chinnaiah v. State of A.P.*, (2005) 1 SCC 394 has held that:

"26. Thus from the scheme of the Constitution, Article 341 and above opinions of this Court in the case of N.M. Thomas [(1976) 2 SCC 394], it is clear that the castes once included in the Presidential List, form a class by themselves. If they are one class under the Constitution, any division of these classes of persons based on any consideration would amount to tinkering with the Presidential List.

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37. We have already held that the members of Scheduled Castes form a class by themselves and any further sub- classification would be impermissible while applying the principle of reservation.

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111. The Constitution provides for declaration of certain castes and tribes as Scheduled Castes and Scheduled Tribes in terms of Articles 341 and 342 of the Constitution of India. The object of the said provisions is to provide for grant of protection to the backward class of citizens who are specified in the Scheduled Castes Order and Scheduled Tribes Order having regard to the economic and educationally backwardness wherefrom they suffer. The President of India alone in terms of Article 341(1) of the Constitution of India is authorized to issue an appropriate notification therefore. The Constitution (Scheduled Castes) Order, 1950 made in terms of Article 341(1) is exhaustive.

43. ...A uniform yardstick must be adopted for giving benefits to the members of the Scheduled Castes for the purpose of Constitution. The impugned legislation being contrary to the above constitutional scheme cannot, therefore, be sustained.

10. According to the petitioner, an ideal situation would be that the National Capital Region, which includes Ghaziabad, Noida, etc. ought to be considered at par with NCT of Delhi for this purpose. Many persons reside in NCR region for accommodation for the purpose of employment and work for gain in NCT of Delhi. In these circumstances, it is arbitrary and unreasonable to treat them as an outside Delhi candidate for the purposes of the present matter.

11. Though both Government of NCT of Delhi as well as IP University have contested this petition, counter affidavit is filed only by the University. The IP University in its counter affidavit has raised a preliminary objection to the maintainability of this petition on the ground that the petition raises only an academic issue and is an exercise in futility. This plea is sought to be supported with the assertion that even if the provisions of DPCI Act are declared and struck down as ultra vires the Constitution, it is in no way going to help the petitioner since the petitioner is neither a resident of Delhi nor has he undertaken the qualifying examination in an institution in Delhi. It is also submitted that the judgment of the Supreme Court in *Dr. Pradeep Jain v. Union of India*, (1984) 3 SCC 654 is of no help to the petitioner in the given circumstances as the ratio of that case is that Article 15 of the Constitution prohibits discrimination on the ground of only place of birth. Therefore, the claim of the petitioner that he should be treated as a 'Delhi candidate' on the basis of his place of birth or place of birth of his father is liable to be rejected. On merits, it is pointed out that IP University is also governed by the provisions of Delhi Professional Colleges Act, Section 12 whereof mandates that 85% of the total seats (except management seats) shall be allocated for Delhi students and remaining 15% for outside Delhi candidates. Section 3(f) of the said Act defines 'Delhi candidate' as "*a candidate who has appeared or passed the qualifying examination from a recognized school or institution situated in Delhi*". This Act applies only to unaided institutions. As per this definition, it is argued, that a student can be treated as 'Delhi candidate' only if he has appeared or passed the qualifying examination from a recognized school or institution situated in Delhi which, according to the respondents, is a valid criteria for defining

'Delhi candidate'. It is argued that the petitioner has not shown any legal basis of proving the said provision to be unconstitutional or ultra vires or discriminatory. The respondents have also referred to the judgment given by this Court in Writ Petition (Civil) No.1531-32/2006 titled as *Independent Schools Federation of India (Regd.) v. Guru Gobind Singh Indraprastha University* decided on 02.06.2006 with connected writ petition wherein a learned Single Judge of this Court held that merely because a particular rule creates some hard situation, that would not be a ground to hold such a provision to be arbitrary. Following observations from the said judgment are specifically referred to and relied upon:

"It is a common knowledge that students whose families are firmly domiciled in Delhi take admission in Schools outside NCT of Delhi. However, one must not forget that every rule will invariably create some hard situations. So far as the reference to Schools in the NCT are concerned the categorization is not arbitrary, and bears a nexus to the objectives sought to be achieved. So long as these two concomitants are present the Writ Court should abjure from interfering with the Policy. Having said that, there is also weight in Mr. Khanna's arguments that there is a great influx of students in Delhi in the 11th and 12th Classes. The Respondents should consider the availability of extending residency requirement of students from 10th class onwards. This will help to separate the genuine students from those joining schools in Delhi only to avail the 85 per cent reservation. Even if this is so done, it would, however, not alleviate the disadvantage and suffering of those students who live in Delhi but attend Schools outside the NCT of Delhi. The Writ Petitions are dismissed with these observations."

12. We have considered the aforesaid submissions. The petitioner in the instant case belongs to Scheduled Caste category. In order to get the benefit of reservation under this category, there is a requirement that the petitioner should possess a valid certificate declaring him holding the status of Scheduled Caste. It is also a matter of common knowledge that a particular caste be fall within the Scheduled Caste in one State but may not be so in another State. In *Marri Chandra Shekhar Rao* (supra), the Constitution Bench of the Supreme Court held that the benefit of reservation for Scheduled Castes and Scheduled Tribes is available to such candidates from the State of origin, i.e., the States from where they have been issued such a certificate. If they have migrated to another State and Union Territory, the benefit of reservation is not available as they are not members of Scheduled Castes and Scheduled Tribes in recipient States/Union Territories. Following this judgment of the Constitution Bench, in *Subhash Chandra* (supra) the Division Bench of the Supreme Court categorically held that grant of benefit of reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes is available only in the State of origin where they belong and the appropriate certificate for the purpose of Article 15(4) and 16(4) of the Constitution of India, so far it relates to the services of the State or Union Territory for admission in an institution of State Government. This judgment pertains to the Government of NCT of Delhi. No doubt, this dicta in *Subhash Chandra* (supra) is doubted by another Division Bench judgment of the Supreme Court in *State of Uttaranchal v. Sandeep Kumar Singh & Ors.*, (2010) 12 SCC 794 and the matter is referred to the larger bench. Thus, whether a person belonging to a scheduled caste in relation to a particular State would be entitled or not to the benefits or concessions allowed to

scheduled caste candidate in the matter of employment, in any other State would be receiving attention at the hands of larger bench of the Supreme Court. Still the ratio of *Subhash Chandra* (supra), which was a case relating to Government of NCT of Delhi, holds the field and is not overruled. Therefore, we proceed on the basis that the person like the petitioner who is having Scheduled Caste certificate issued from the authorities in Delhi is entitled to such a benefit only in Delhi and not in any other States.

13. The question that arises, in the given circumstances, is as to whether the petitioner is totally excluded from the benefit of reservation. Entire focus of the submission of the petitioner predicates on this hypothesis, namely, as per *Marri Chandra Shekhar Rao* (supra), followed in *Subhash Chandra* (supra), the petitioner is entitled to reservation in Delhi but is denied the same. A closer scrutiny of the position would show that it is not so. Two issues are independent, namely, giving the benefit of reservation to the petitioner as 'scheduled caste candidate' on the one hand and treating him as 'Delhi candidate' against 85% quota reserved for 'Delhi reserved category' on the other hand. For getting the benefit under Delhi reserved category, the petitioner has to be 'Delhi candidate' as per the provisions of DPCI Act. For this, specific definition of 'Delhi candidate' is provided which mandates that such a candidate should have appeared or passed the qualifying examination from a recognized school or institution situated in Delhi. This is, thus, the additional condition which is prescribed for according the status of 'Delhi candidate'.

14. It is the prerogative of the Legislature to lay down the conditions for treating a particular candidate as 'Delhi candidate'. Position would have been different if the petitioner was denied reservation on the basis of Scheduled Caste certificate altogether. This is not so. Vide circular dated 4.7.2012, IP University clarified that if qualifying examination is passed from outside Delhi and reservation certificate issued anywhere in India, including Delhi, for SC/ST category, then admission is permissible under outside Delhi reserved category. Therefore, the petitioner is treated as belonging to reserved category even for admission in Delhi on the basis of SC certificate which he possesses. The only difference is that since he is not a 'Delhi candidate', the reservation permissible to him is against 15% quota meant for outside Delhi candidates.

15. It is in this scenario we have to adjudge as to whether the definition of 'Delhi candidate' is arbitrary or discriminatory. When we examine the matter in the aforesaid perspective, we do not find it to be so.

16. In *Vikas Pathania v. U.S.I.*, 1996 RLR 443, a Division Bench of this Court had repelled the contention that such a rule was arbitrary or unreasonable or violative of Article 14 of the Constitution in the following words:

(4) Keeping in view the observations made in Pooja's Malik's case which seem to have inspired by the judgment of the Supreme Court in Pradeep Jain v. 1984 (2) SCC 645 upholding the reservation in admission on the basis of residence requirement and Constitution reservations, we find no force in the present, writ petition. It is not that the right of the petitioner to appear in the All India Entrance Test for admission to medical colleges under the University of Delhi or all

over India has been taken away. He has that right. We may mention that 15% of the total number of seats are admittedly to be filled up on the basis of All India Entrance Examination. Thus the requirement emphasised in *Dr. Dinesh Kumar v. Moti Lal Nehru Medical College* [1986] 3 SCR 345 stands fully satisfied. We further feel that the following observations made in para. 10 of *Anand Madan v. State of Haryana* AIR 1995 SC 955 clinch the issues : "10. In the present case, the reservation which has been made on the basis of candidates having studied for the proceeding three years in recognised schools/colleges in Haryana is in respect of these 85% of seats. It excludes 15% seats which have to be filled in on an all-India basis. The eligibility criterion, Therefore, is in conformity with the decisions of this Court referred to above. It cannot, Therefore, be considered as arbitrary or unreasonable or violative of Article 14 of the Constitution."

17. However, the question of attaining uniformity in all P.G. courses all over the country was left open observing that it would be appropriate for the concerned States or other authorities to achieve uniformity by adopting institutional and/or residential preferences in terms of decisions referred to by the Courts. Merely because the provision is harsh to the petitioner as he cannot be treated as 'Delhi candidate' since he had his entire education outside Delhi, cannot be a ground to invalidate the provision either as discriminatory or arbitrary.

18. In the case of *Government School Teachers Association (Regd.) v. University of Delhi & Ors.*, 2006 (90) DRJ 143, a Single Judge of this Court after referring to earlier judgment in *Independent Schools Federation of India (Regd.)* (extract whereof we have reproduced above) summed up the position as under:

“7. So far as WP (C) No.7242/2003 is concerned, it has indubitably raised a very complicated and delicate question. It is a common knowledge that students whose families are firmly domiciled in Delhi take admission in Schools outside NCT of Delhi. However, one must not forget that every rule will invariably create some hard situations. So far as the reference to Schools in the NCT are concerned the categorization is not arbitrary, and bears a nexus to the objectives sought to be achieved. So long as these two concomitants are present the Writ Court should abjure from interfering with the Policy. Having said that, there is also weight in Mr.Khanna's arguments that there is a great influx of students in Delhi in the 11th and 12 Classes. The Respondents should consider the advisability of extending residency requirements of students from the 10th class onwards. This will help to separate the genuine students from those joining Schools in Delhi only to avail the 85 per cent reservation. Even if this is so done it would, however, not alleviate the disadvantage and suffering of those students who live in Delhi but attend Schools outside the NCT of Delhi. The Writ Petitions are dismissed with these observations.”

19. We, thus, cannot agree with the submission of the petitioner and finding no merit in the writ petition, we dismiss the same.

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20. There are two petitioners in this writ petition who again desired to get admission against 85% Delhi quota. However, they are seeking admission to MBBS course in the medical colleges affiliated to University of Delhi. They have even had their entire education up to 12th standards, as regular students, from schools in Delhi. Therefore, they are treated as “Delhi students” and are to be considered against seats under 85% Delhi

quota in the aforesaid course. The grievance of these petitioners, however, is that all those who have studied class 11th and 12th from Delhi schools are treated as “Delhi students” even when they are not the domiciles of Delhi and they are the permanent residents of other States. They have referred to para 2.4 of the bulletin of information for the courses of MBBS issued by Faculty of Medical Sciences, University of Delhi in this behalf which reads as under:

“2.4 Requirement for admission to MBBS/BDS courses

2.4.1 The candidates should have completed the age of 17 (seventeen) years on or before 31st December 2012. The candidates completing the age of 17 years on 1st January 2013 or later will not be eligible for admission.

2.4.2 Candidates, who have passed 12th class examination under 10+2 system conducted by the C.B.S.E./Council of the Indian School Certificate Examination/Jamia Milia Islamia, New Delhi with required subjects i.e. Physics, Chemistry, Biology, and English from the recognized schools conducting regular classes situated within the National Capital Territory of Delhi only, will be eligible for admission. The candidate must have studied 11th and 12th classes regularly from a recognized school within the National Capital Territory of Delhi. Further the candidate must have passed in the subjects of Physics, Chemistry, Biology and English separately and must have obtained a minimum of 50% marks (40% marks in case of SC/ST category candidates and 45% marks in case of OBC category) taken together in Physics, Chemistry and Biology.....”

21. The petitioners have challenged the validity of aforesaid para 2.4 of the bulletin. It is the case of the petitioners that para 2.4 of the Bulletin of

Information is violative of the Right of Equality guaranteed under Article 14 of the Constitution of India.

22. In the counter affidavit filed by the respondents, they have submitted that the eligibility condition and procedure for admission to MBBS/BDS courses are considered by the Medical Courses Admission Committee and the recommendations made by it are considered by the appropriate body of the University and finally approved by the Academic Council of the University. It is settled law that a well-informed and considered decision taken by the academic bodies on the basis of material and information available to it is beyond the scope of judicial review as the said body is the best judge of the situation and the manner of dealing with the same. It has been held by the Supreme Court that courts should not interfere in purely academic matters. It is further submitted that in the case of *Anant Madaan v. State of Haryana & Ors.*, (1995) 2 SCC 135, the Supreme Court upheld the validity of the eligibility condition for entrance examination requiring that candidate should have studied for three years in a recognized institution in the State of Haryana. It was also submitted that the aforesaid judgment of the Supreme Court was followed by a Single Judge of this Court in *Avijit Bansal v. University of Delhi & Ors.*, 2003 (7) AD (Del) 349 and it was held that the requirement of passing class 11th and 12th from a recognized school in NCT of Delhi for appearing in entrance test for admission in MBBS/BDS course based on institution preference is not arbitrary or unreasonable or violative of Article 14 of the Constitution of India.

23. Judgment in *Dr. Dinesh Kumar v. Moti Lal Nehru Medical College*, referred in *Vikas Pathania* (supra) is that of Supreme Court reported as **AIR 1986 SC 877**. Somewhat similar contention was raised before the Supreme Court in *Dr. Parag Gupta v. University of Delhi & Ors.*, **AIR 2000 SC 2319**, as is clear from the opening para of the said judgment which reads as follows:

“Students who had qualified for medical degree course got admission under the All India quota of 15 per cent and migrated to different States to pursue the course of study and are now seeking admission into Postgraduate courses. Their grievance is that the States or concerned authorities have framed admission rules in such a way that they can neither pursue their studies in the migrated State nor in their home State.”

24. Ratio of many judgments on the issue already rendered by the Apex Court including *Dr. Pradeep Jain* (supra) and *Dr. Dinesh Kumar* (supra) were re-visited from which following principle was culled out:

7. These decisions lead us to the following principles.

8. Though university wise preference is permissible, college wise preference is not. 70% to 80% reservation has been sustained even where the students from different universities appear at a common entrance test. After the decisions in *Dr. Pradeep Jain* (supra) and followed by *Dinesh Kumar* (supra) the practice all over the country was to make 15% of the seats in MBBS course and 25% of the seats in post graduate medical courses in all the government medical colleges in the country available on the basis of merit alone. Students from anywhere in the country can compete for these seats which are allotted on the basis of an all-India test

conducted by the designated authority. The rule of preference on the basis of domicile or requirement of residence is not bad provided it is within reasonable limits and does not result in reserving more than the aforesaid percentage. Where the students from different universities appear at a common entrance test the rule of university-wise preference loses its relevance. The explanation of difference in evaluation, standards of education and syllabus lose much of their significance when admission is based upon a common entrance test. At the same time, the right of the State Government to regulate the process of admission and their desire to provide for their own students should also be accorded due deference. In the light of these principles, we examine the facts arising in the present case.

9. There are 32 States and Union Territories which provide for medical education. At the graduate level (M.B.B.S.), except Jammu & Kashmir and Andhra Pradesh, all the States and Union Territories pool 15% seats to be filled from common entrance examined on all-India basis, rest of the 85% of seats are filled by holding entrance examined at the State level. In 15% seats filled on All-India basis students from one State have to migrate to other State allotted to them for pursuing MBBS course. 18 States and Union Territories, apart from Jammu & Kashmir and Andhra Pradesh, provide post graduate medical courses on pooling 25% seats to be filled on all-India basis by a common entrance examination conducted by AIIMS. All MBBS qualified students can compete for admission without any restriction in this 25% quota and for filling the remaining 75% seats in post graduate courses the States or Union Territories have adopted different criteria for admission. Some states have adopted institutional preference, while some others residential preference. Various States having different criteria of reservation may be tabled as follows:

“State Nature of Preference 1. U.P. Institutional 2. Delhi Institutional 3. Maharashtra Institutional 4. Gujarat Institutional 5. West Bengal Institutional 6. Assam Residence 7. Tamil Nadu Residence 8. Goa Residence 9. Karnataka Residence 10. Madhya Institutional OR Pradesh Residence 11. Haryana Institutional OR Residence 12. Punjab Institutional OR Residence 13. Rajasthan Institutional OR Residence 14. Kerala Institutional OR Residence 15. Orissa Institutional OR Residence 16. Himachal Institutional OR Pradesh Residence 17. Bihar Institutional OR Residence 18. Pondicherry 25% All India quota + 37.5% institutional of available seats + 27.5% of available seats open for all.”

10. The contention put forth before us is that the different criteria adopted by different seats encroach upon the rights of the students who have qualified MBBS under the 15% all-India quota who invariably migrate to other States from their home-State and do not get any opportunity for advancement of their career in their home-State as they are debarred for admission on account of different criteria, either on account of reservation on the ground of residential requirement in the migrating State or on the ground of institutional preference adopted by the State or Union Territories or Universities.

11. Writ Petition (Civil) No. 12 of 1999 filed by Dr. Parag Gupta may be taken as an illustrative case. The plea put forward by the writ petitioner in this case is that he is born and brought up in Delhi and, therefore, he should be permitted to participate in the entrance examination being conducted by the Delhi University and should be considered for admission by Delhi University against the 75% seats. The plea put forth is that he studied the MBBS course in Tamil Nadu having been allotted to Tamil Nadu under the 15% quota of seats being filled up on all-India basis by the Director General Health Service pursuant to the scheme

framed by this Court after the decision in Dr. Pradeep Jain (supra) and neither he is permitted in Tamil Nadu to appear in the entrance examination on the ground that he is not a resident of that State nor is he allowed to take the entrance examination being conducted by the Delhi University because he did not study for the last five years in the Delhi University. On the other hand, the stance of the Delhi University is that the petitioner can certainly compete for the all-India 25% of seats earmarked to be filled up on all-India basis from the candidates selected and sponsored by the Director General of Health Services, the remaining 75% having been earmarked for students who have graduated from Delhi University, he is not entitled to claim admission at all. Like most of the Universities across the country, even in Delhi University, reservation of seats other than the seats being filled up on all-India basis is on the basis of institutional preference, that is, the seats are reserved to be filled up in the post graduate medical courses in favour of students who have passed their MBBS course from the Delhi University. Irrespective of the place of birth and having been a resident of Delhi if an applicant is an MBBS graduate of the Delhi University, he is eligible to be considered for admission against 75% seats. This Court had upheld the validity of the criteria in view of the peculiar circumstances arising in Delhi University in Jagdish Saran (supra), to which we have adverted to earlier. This criteria was again considered by a Three Judge Bench of this Court in Dr. Pradeep Jain (supra) and, it is submitted that, since the criteria has already been upheld by this Court the challenge to the same is misconceived and is not maintainable at all. Inasmuch as the petitioner is not an MBBS graduate of Delhi University the proper course for him would be to seek a direction from the State of Tamil Nadu where he was a student of MBBS course that he should be permitted to seek admission in the post graduate medical courses in the State of Tamil Nadu and the requirement of domicile stipulated by the State of Tamil Nadu be considered to be invalid. It is further

submitted that the petitioner would have an unfair advantage inasmuch as he had secured admission under 15% all-India quota, he would become ineligible in the State of Tamil Nadu even though he is a medical graduate from that State and would be deemed to be eligible from Delhi merely on the ground that he was born and brought up in Delhi; that because he obtained a law position in comparison to a large number of other candidates with whom he is competing for the MBBS course in the Delhi University, he would gain an unfair advantage on this and the petitioner being fully aware of the criteria followed by the Delhi University to the MBBS courses by the time he chose to secure admission in Tamil Nadu from all-India quota having been unable to secure admission in Delhi University. It is contended that if the claim put forward by the petitioner is accepted, then he would become eligible in 25% all-India quota in all institutions all over the country and would also become eligible for 75% seats in Tamil Nadu and 75% in Delhi. Thus he would have opportunity of competing against 175% of seats. As regards the meritorious candidates in Delhi they would be eligible against 100% of seats - 25% all-India quota and 75% seats in the Delhi University and thus it would confer unjustified favour and benefits to all such candidates as the petitioner in the present case. If the pattern followed by the Delhi University is adopted and followed by all institutions and States throughout the country which is in conformity with the norms laid down by this Court it would ensure that no candidate secures any unfair advantage in admission to post graduate courses. If the institutional preference is adopted as a uniform criteria for reservation for post graduate courses, it would ensure that every candidate irrespective whether he secures admission to the MBBS courses from 85% seats reserved for local candidates or 15% seats for all-India basis or whether he was allotted in the State of his origin or residence, or to any other State, will have an equal opportunity to appear in post graduate course. Further it is contended that other institutions and States

which have adopted the criteria of domicile for State quota ought to be directed to discontinue the same and reservation, if any, should be done as is permitted in Dr. Pradeep Jain (supra) case on the basis of institutional preference.”

25. As pointed out above, in those cases, students were those who were born and brought up in Delhi and had even much of their education in Delhi but got admission under All India quota of 15% and migrated to different States to pursue their course of study. For admission to postgraduate courses, they were not treated as students belonging to home State, i.e. Delhi since they had done their graduation course from outside Delhi. The contention of these persons was that they should be considered for admission against Delhi quota. They had also contended that different criteria adopted by different States encroached upon the rights of the students who qualified MBBS under the 15% All India quota, invariably migrated to another State and do not get any opportunity for advancement of their career in their home State. The Court noted the facts of one writ petitioner, namely, Dr. Parag Gupta and found that he was born and brought up in Delhi; had studied the MBBS course in Tamil Nadu against 15% All India quota but for his postgraduate course, he was neither permitted in Tamil Nadu to appear in the entrance examination on the ground that he was not a resident of that State nor was he allowed to take the entrance examination to Delhi University since he did not study for the last five years in the Delhi University. The stand of the Delhi University was that he was eligible to compete against 25% seats earmarked to be filled up on All India basis from the candidates selected and sponsored by the Director General of Health Services as remaining 75% were to be filled

up from those students who graduated from Delhi University. The Court, noting the respective submissions and the position contained in different States, observed that:

“12. In this background, we have to evolve a principle which is equitable to all. Taking into consideration local and regional compulsions we have to strike a balance so that students who have pursued studies in a particular university or State are not invidiously stranded or marooned. The grievance of the petitioners, if examined closely, is very limited and that is these students who have gone out of their home-States to pursue studies else where on All India quota should be allowed to participate to compete in their home-States where they have their roots, to pursue post-graduate studies.

13. The objection of the University and the intervening students is that such students will have an unfair advantage of competing in All India quota + home-State quota + institutional quota in that University where they studied. We fail to see any unfair advantage in this regard inasmuch as all students have to give common entrance test with reference to their home State and face stiff competition. The students in home State if at all are put to disadvantage only to a small degree of taking competition with respect to very few students falling in that category of the petitioners. On the other hand, inclusion of such students will make it broad based as well thereby striking a balance. Thus, we think, if students of the home State are also allowed to participate in the entrance test, there will be uniformity all over the Country and small disadvantage removed with respect to a small section of student community does not disturb the balance and the advantage derived achieves uniformity.”

26. We have already upheld the validity of provision prescribing the condition that to be treated as 'Delhi candidate', a student must have studied from a recognized school within the NCT of Delhi. That is precisely the requirement provided in para 2.4.2 above as well. No doubt, this provision is also giving benefit to those who were not born in Delhi or are the domicile of this place but have undertaken their studies in class 11 and class 12 in Delhi. In so far as the petitioners are concerned, they have studied 11th and 12th from a recognised school within the NCT of Delhi and are, therefore, not debarred from getting the benefit of this category. For the reasons given in the aforesaid judgment, we reiterate that it is for the respondents to make the eligibility conditions. May be it would be more appropriate for the policy makers to lay down the eligibility condition of domicile also but merely because that is not done would not make the rule arbitrary or unreasonable.

27. Thus, we do not find any merit in this writ petition as well which is accordingly dismissed.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

AUGUST 21, 2012

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