HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Reserved on: 07.10.2025
Pronounced on: 18.10.2025
Uploaded on 18.10.2025
Whether the operative part or
full judgment is pronounced

Case No.:- WP(C) No. 1042/2024
c/w
WP(C) Nos. 578/2022 & 972/2022

(i) & (ii) Jammu College of Physiotherapy Jammu

(iii) Jammu Institute of Ayurveda and Research

.....Petitioner(s)

Through: Mr. Rahul Pant, Sr. Advocate with
Mr. Anirudh Sharma, Advocate.

Vs

UT of J&K & ors.

..... Respondent(s)

Through: Mr. Suneel Malhotra, GA for R-2 & 3 in WP(C) No. 1042/2024, for R-2 in WP(C) in 578/2022 & for R-2 & 3 in WP(C) No. 972/2024.
Mr. Ajay Abrol, Advocate for respondent-University of Jammu in all the petitions.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. Through the medium of the present judgment, the afore-titled three writ petitions, involving similar issues of fact and law, are proposed to be disposed of.

2. WP(C) No. 972/2022 has been filed by Jammu College of Physiotherapy seeking the following reliefs:

> *"Certiorari quashing the Government Order No. 634-HME of 2019 dated 04.07.2019 to the extent respondents No. 1 and 2 have decided to fill up the seats in the Bachelor of Physiotherapy (Ist year) Course in the petitioner-institute on the basis of the merit obtained by the candidates in the National Entrance-cum-Eligibility Test;*
>
> *Certiorari quashing the seat sharing devised by the Respondent No. 1 whereby 45 seats of the Bachelor of Physiotherapy (Ist year) Course of the petitioner-Institute have been usurped by the respondent No. 1 as government quota seats;*
>
> *Mandamus commanding the respondents to fill up all the 60 seats of Bachelor of Physiotherapy (Ist year) course in the petitioner institute by conducting counseling at the national level and to allow the petitioner-institute to fill up the left over seats by conducting college level counseling and without insisting for the condition of domicile of Union Territory of Jammu and Kashmir*
>
> *Or in the alternative*
>
> *Declare the S.O 175 dated 20.05.2020 whereby the eligibility for appearing in any Entrance Test conduct by the respondent No. 2 has been confined to domiciles of Union Territory of Jammu and Kashmir as illegal, arbitrary and unconstitutional.*

3. WP(C) No. 1042/2024 has been filed by Jammu College of Physiotherapy seeking the following reliefs:

> *"Mandamus commanding the respondents to allow the petitioner to fill up the 42 available vacant seats, as remain unfilled for the session 2023-24 in the 1st year of 4 and ½ years Degree Course in Physiotherapy i.e. Bachelor in Physiotherapy (BPT for short) after the conclusion of counselling by the respondent No.2, by*

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conducting its own counselling from amongst the 10+2 qualified, eligible candidates.

Certiorari quashing 100% reservation provided by the respondents to the domiciles of Jammu and Kashmir for admission into petitioner institute in Bachelor of Physiotherapy course.

Mandamus commanding the respondents to allow the petitioner institute to fill up the 42 available vacant seats for the session 2023-24 in the 1st year of 4 and 1/2 –years Degree Course in Physiotherapy i.e. Bachelor in Physiotherapy (BPT for short) as remain unfilled after the conclusion of the counselling by the respondent No.2 by conducting in-house counselling at the national level and without insisting upon the condition of domiciles of Jammu and Kashmir for the purpose of admission."

4. WP(C) No. 578/2022 has been filed by Jammu Institute of Ayurveda and Research seeking the following reliefs:

"Mandamus commanding the respondents to allow the Petitioner No.1-Instiute to admit eligible students by conducting college level counselling against the available seats in the Post-Graduate courses as have remained vacant/unfilled after the centralized counselling conducted by the Respondent No.2, without insisting for the condition of domicile in the Union Territory of Jammu and Kashmir.

Mandamus commanding the respondents more particularly, the Respondent No.2 to conduct the centralized counselling for admission to left over seats in the Petitioner No.1-Institute in Post-Graduate courses by conducting the centralized counselling at All India Level without insisting for the condition of domicile of the Union Territory of Jammu and Kashmir, before the cut of date fixed for the same.

Mandamus commanding the respondents to not to confine the admissions in the Petitioner No.1-Instiute against the management quota seats both in the Post-Graduate as well as

Under-Graduate courses to the candidates possessing domicile certificates in the Union Territory of Jammu and Kashmir only."

5. Jammu College of Physiotherapy, the petitioner in WP(C) Nos. 972/2022 and 1042/2024 is stated to have been established by Shri Sain Charitable Trust for Higher Education and Research, Kot Bhalwal and it is a private unaided institute providing education at under-graduate level in Physiotherapy. According to the petitioner, it has intake capacity of 60 seats which have been bifurcated by respondent No. 1-UT of Jammu and Kashmir into government quota (45 seats) and management quota (15 seats). It is being stated that till the year 2018, the government quota seats were being filled up by respondent No. 1-UT of Jammu and Kashmir through respondent No. 2-J&K Board of Professional Entrance Examination (hereinafter to be referred to as **'J&K BOPEE'**) whereas, the management quota of 15 seats was being filled up by the management itself. The filling up of management quota was being supervised by Supervisory and Monitoring Committee appointed by the Government, which was headed by a retired judge of the High Court.

6. After the year 2018, the Government decided to fill up all the seats of its own and for the said purpose, respondent No. 2-J&K BOPEE has been entrusted with the job of counselling

process and for recommending the candidates for admission against all the seats available in the petitioner–College. In this regard, Govt. Order No. 634-HME of 2019 dated 04.07.2019 has been issued, which is under challenge in WP(C) No. 972/2022.

7. So far as eligibility for admission to 1st year Bachelor of Physiotherapy (BPT) is concerned, the same as prescribed by University of Jammu–respondent No. 4 is 10+2 in Science stream with 50% marks in aggregate in Physics, Chemistry and Biology in the case of General Category candidates and 40% in the case of Scheduled Caste and Scheduled Tribe category candidates. It has been submitted that prior to introduction of National Eligibility-cum-Entrance Test (NEET) for admissions to MBBS and BDS courses, respondent No. 2-J&K BOPEE was conducting a common entrance test for professional courses including the course of BPT and on the strength of merit obtained by the candidates in the common entrance test, the seats were being filled up in the government quota. According to the petitioner, after the introduction of NEET at the national level w.e.f., 2016-17, respondent No. 2-J&K BOPEE is recommending the candidates on the basis of the merit obtained by them in NEET and has stopped conducting its own entrance examination.

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8. It is the case of the petitioner–College that for the purpose of undergoing a course of BPT, there is no requirement to either appear in NEET or to qualify the same as the said examination is confined only to admissions to Medical, AYUSH and BDS courses at under-graduate level but in derogation of the legal position, respondent No. 2-J&K BOPEE is making selection of the candidates even to the BPT course on the basis of NEET score, which is illegal and arbitrary.

9. It is being further submitted that respondent No. 2-J&K BOPEE is confining the process of admission to the domiciles of the UT of Jammu and Kashmir on the basis of Notification S.O 175 dated 20.05.2020, which makes it mandatory condition of eligibility to be a domicile of Jammu and Kashmir. This Notification is under challenge in WP(C) No. 972/2022. It is being contended that the said Notification cannot be applied for the purpose of admission to unaided private institutions like the petitioner-College as the said college is not bound by the reservation policy of the Union Territory of Jammu and Kashmir, which is applicable only to the admissions in Government or Government aided colleges.

10. It is the further case of the petitioner-College that because of the aforesaid illegal and arbitrary policy of the respondents to fill up the seats on the basis of NEET score and by confining

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the selection only to the domiciles of UT of Jammu and Kashmir, the full intake capacity of the petitioner-College is not being utilized. It has been submitted that in the session 2021-2022, only 30 seats could be filled up leaving 24 seats vacant. In the session 2022-2023, only 16 seats could be filled up and with the intervention of the Court, 10 more seats were filled up taking the total number of filled up seats to 26 thereby leaving 34 seats vacant.

11. According to the petitioner-College, before the aforesaid impugned decisions of the Government, the said college was enjoying the liberty to admit the eligible candidates to the management quota seats at national level and there was no restriction for admission of candidates to BPT course for the candidates from other parts of the country. It has been submitted that because of the impugned decision of respondent No. 2-J&K BOPEE, many seats even in the government quota are remaining unfilled thereby causing tremendous loss to the petitioner-College.

12. In short, the contention of the petitioner-College is two fold, first that there is no statutory or legal requirement of qualifying NEET for admission to BPT course and second that by confining the process of selection to only domiciles of UT of J&K, respondent No. 2-J&K BOPEE has in effect resorted to

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100% reservation, which is impermissible in law. The contention of the petitioner-College is that NEET is mandatory for admission to MBBS/BDS/AYUSH courses, in view of the statutory requirements provided under Indian Medical Council Act, 1956, Dentist Act, 1948 and Indian Medicine Central Council Act, 1970 but there is no such statutory requirement in the case of Bachelor in Physiotherapy course, which is not governed by any of the aforesaid statutes. It is being contended that Bachelor in Physiotherapy is a para-medical course, which is governed by the J&K Para-Medical Council Act and there is no requirement of qualifying NEET for a candidate to be eligible for selection to the said course.

13. The petitioner-College has contended that it is not averse to having selection process through an entrance test to be conducted by respondent No. 2-J&K BOPEE but making NEET mandatory and confining the selection to domiciles of UT of J&K only, is working harshly against the petitioner-College inasmuch as it is unable to fill up all the seats as per its intake capacity, which results in huge loss to the petitioner-College, as a consequence whereof, it has become difficult for it to recover even the operational costs. It has been contended that in most of the other states of the country, neither there is any requirement for NEET examination for admission to BPT course nor there is any 100% reservation for local candidates

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but in the case of UT of Jammu and Kashmir, the respondents have taken an arbitrary and illegal decision thereby violating the constitutional right of the petitioner as guaranteed under Articles 14, 15 and 19(1) (g) of the Constitution. It has been further contended that due to the impugned actions of the respondents, the petitioner is unable to admit candidates from other parts of the country and because of the requirement of NEET even the candidates from UT of J&K prefer to take admission in colleges located in nearby states where there is no such requirement laid down.

14. So far as petitioner-Jammu Institute of Ayurveda and Research is concerned, it is being claimed that the said institute is an educational institution run by the same trust viz., Shri Sain Charitable Trust for Higher Education and Research, which is providing education both at under-graduate level and post-graduate level in Ayurveda viz., Bachelor of Ayurvedic Medicine and Surgery (BAMS) and the post-graduate courses. It has been submitted that there is intake capacity of 60 seats at under-graduate level and 10 seats at the post-graduate level. Out of these seats, 15 seats at under-graduate level and 4 seats in the post-graduate level fall in the management quota.

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15. The case of the petitioner is that while NEET has been made mandatory even in the case of admission to AYUSH courses by making provision for the same in Indian Medicine Central Council Act but because of the Notification issued by respondent No. 2-J&K BOPEE vide S.O 175 dated 20.05.2020, the admission is being confined only to domiciles of UT of J&K as a result of which many seats are left unfilled in both under-graduate and post-graduate courses. It has been submitted that prior to the issuance of the aforesaid Notification, the petitioner-Institute was admitting students from out of the State of J&K in post-graduate courses at All India level. It has been submitted that because of the restriction imposed vide aforesaid notification dated 20.05.2020, many seats are left unfilled in post-graduate courses despite availability of the candidates at all India level and despite the fact that such candidates are eligible and have qualified AIAPGET.

16. It has been submitted that in the year 2019, only seven seats out of the Govt. quota seats in post-graduate course could be filled leaving two seats vacant in the Govt. quota and in the management quota, only one seat could be filled up out of total six seats allocated for management quota seats. Thus seven seats at post-graduate level could not be filled up. Same position was repeated in the year 2020 when only two seats for post graduate course could be filled up in Govt. quota and no

seat was filled up in management quota. Thus, 13 seats at post-graduate level remained unfilled. In the session 2021-2022 only three seats for post graduate course in Govt. quota are stated to have been filled up and not even a single seat in management quota was filled up.

17. The petitioner-College in this case is also aggrieved of the refusal on the part of the respondents to permit it to fill up left over vacant seats at post-graduate level by conducting college level counseling from amongst the eligible candidates at All India level. According to the petitioner, this restriction imposed by respondent No. 2-J&K BOPEE is violative of Article 19(1) (g) of the Constitution. It has been submitted that there are many institutes offering Bachelor of Education (B.Ed) courses in the Union Territory of Jammu and Kashmir, where students from outside Union Territory of Jammu and Kashmir are being admitted without insisting for the condition of domicile of Union Territory of Jammu and Kashmir but in the case of the petitioner, a different yardstick is being adopted.

18. The respondents have filed separate replies to each of the writ petitions but their stand in all the three writ petitions is more or less the same. Therefore, narrating the reply of the respondents in each of the three writ petitions would amount to repetition and in order to avoid the same, only the brief

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grounds of defence that have been projected by the respondents in their respective replies are being narrated.

19. The stand of respondent No. 2-J&K BOPEE is that it is an implementing/executing agency, which is mandated to make counseling and admission to various professional courses in accordance with procedure and schedule fixed by the regulatory /competent authority. It has been submitted that respondent No. 2-J&K BOPEE has made exhaustive efforts in accordance with the procedure established under law to fill up seats in the Govt./private institutions of UT of J&K including the petitioner-College. Despite this, if some seats have remained vacant in any college including the petitioner-College, respondent No. 2-J&K BOPEE cannot be held responsible for the same. Along with the reply, the respondent No. 2-J&K BOPEE has placed on record various notifications, with a view to demonstrate that exhaustive efforts were made by the Board to fill up all the seats available for admission to Bachelor of Physiotherapy course in various sessions.

20. It has been contended that carrying on of trade or profession is subject to reasonable restrictions and regulatory measures, and therefore, the State government can specify academic qualification for students and make rules and regulations for maintaining academic standards so that merit based

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admission is ensured and there is no exploitation. It has been submitted that occupation of the petitioner-College is primarily a service to the society and earning of profits is only a secondary or incidental objective. It has been further submitted that respondent No. 2-J&K BOPEE only allocates seats in different courses as per the reservation policy and orders of the Union Territory Government. It has been submitted that as per the Notification issued by UT Government on 20.05.2020, it is mandatory to be a domicile of the UT of J&K for admission to professional courses in UT of J&K. It has been further submitted that respondent No. 2-J&K BOPEE cannot be compelled to make admission in the petitioner-Institutes contrary to the rules and regulations on the subject.

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21. The respondent-UT of J&K has, in its reply, submitted that it is committed to objective of ensuring quality education with regard to which, it has taken policy decisions. It has been submitted that objective of conducting a pan-India entrance examination in a uniform manner is to select meritorious candidates so as to groom the potential students as the bulwark against the sparse and sub-standard healthcare of the citizens. It is for this reason that respondent No. 2-J&K BOPEE is making selection on the basis of the score obtained by the candidates in National Eligibility cum Entrance Test

(NEET). It is the stand of the respondent-UT of J&K that for the objective of achieving standard health care and to streamline the process of admissions and to bring meritorious students to the health care system, impugned Government order dated 04.07.2019 came to be issued whereby all seats in AYUSH and Physiotherapy courses were decided to be filled up by J&K BOPEE through joint/common counseling by mandatorily using NEET score as is being done in respect of management quota seats of MBBS/Dental courses in the case of private colleges of the State. It has been submitted that the aforesaid order dated 04.07.2019 is in complete conformity with law and does not suffer from any vice of arbitrariness.

22. Regarding S.O 175 dated 20.05.2020, which restricts the selection to the candidates, who are domiciles of UT of J&K, it has been submitted that it is a policy decision taken by the Government in the interests of domiciles of UT of J&K and the same cannot be whittled down by an individual for his selfish interests. According to the respondent-UT of J&K, carrying on trade or profession is subject to the reasonable restrictions and regulatory measures and the Government has power to impose reasonable restrictions and regulatory measures with a view to save the student community from exploitation and to maintain academic standards.

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23. It has been contended that the petitioner-College cannot be allowed to open a self-styled admission window without any regulatory mechanism and it cannot be allowed to indulge in profiteering to the detriment of general public and in violation of principles of law. It has also been contended that it is not open to this Court to undertake a judicial review of the policy decision taken by the Government.

24. Respondent-University of Jammu, in its reply to the writ petitions, has submitted that it is only an examination conducting body for grant of requisite degrees in various streams in terms of the University Statute/calendar. It has been submitted that the respondent-University has no role in selection/admission of the candidates for pursuing courses in the respective streams in terms of criteria/mode prescribed by the Government. It has been further submitted that as per the notifications issued by the Government, the admission to undergraduate courses in the professional colleges are to be carried out by J&K BOPEE.

25. It has been further submitted that University of Jammu in strict sense has not laid down any criteria for the purpose of admissions, which is the domain of the Government as well as J&K BOPEE in terms of the Act and the Rules. It has been submitted that for admission to the degree course of Bachelor

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of Physiotherapy, the eligibility conditions as per the University Calendar is minimum age of 17 years as on 31st December of the year of admission to the Institute/college, passing of Higher Secondary Part-II examination of the J&K State Board of School Education or an examination recognized as equivalent thereto with 50% marks in aggregate of English, Physics, Chemistry and Biology taken together. In the case of candidates belonging to Scheduled Caste and Scheduled Tribe and other reserved categories, the minimum percentage of marks has been fixed as 40%.

26. It has been further submitted that admission to the degree of Bachelor of Physiotherapy in the affiliated colleges of the University of Jammu is to be made on the basis of merit of the candidate in the common entrance test conducted by the competent authority, medical fitness of the candidate and payment of admission fee as prescribed by the University from time to time.

27. I have heard learned counsel for the parties and perused record of the case.

28. As is clear from the pleadings of the parties, the basic issues that are involved in the present writ petitions are whether holding of selection to undergraduate course of Bachelor of Physiotherapy on the basis of NEET score is irrational, illegal

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and arbitrary being without any sanction of statutory frame work. The second issue that falls for determination in these writ petitions is as to whether debarring the eligible candidates from other parts of the country from participating in the selection process to the admissions in Bachelor of Physiotherapy course and AYUSH courses (under-graduate and post-graduate) is an unreasonable restriction on right of the petitioner-College guaranteed under Article 19(1)(g) of the Constitution.

29. Before determining the aforesaid issues, it would be apt to notice the legal position as regards the right of an individual to establish and manage an educational institution. The Supreme Court of India in the case of **"T.M.A Pai Foundation & Ors Vs. State of Karnataka & Ors"**, **(2002) 8 SCC 481** has held that right to establish and manage educational institution as an occupation is protected under Article 19(1)(g) of the Constitution of India. It has been held that this right includes the right to admit students, right to set up reasonable fee structure, right to appoint staff and right to take action against an employee. The Supreme Court in the said case, however, recognized the power of the Government to frame policies and regulations to ensure that admissions to the educational/professional institutions is made in a transparent manner. The Court observed as under:

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67. We now come to the regulations that can be framed relating to private unaided professional institutions.

68. It would be unfair to apply the same rules and regulations regulating

admission to both aided and unaided professional institutions. It must be

borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forgo or discard the principle of merit. It would, therefore, be permissible for the university or the government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the Management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the state agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the government according to the local needs and different percentages can be fixed for minority unaided and· non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz., graduation and post graduation non-professional colleges or institutes.

30. From the above analysis of legal position, it is clear that while right to establish and manage educational institution as an occupation is guaranteed under Article 19(1)(g) of the Constitution of India but at the same time, the same is subject to reasonable restrictions. Therefore, the Government has

power to regulate the exercise of such right by an individual by framing policy and regulations so as to ensure fair and transparent admission to educational/professional institutions. This would apply even to unaided educational/professional institutions, both at graduate and postgraduate level. Thus, so far as the power of the Government to regulate the admission to professional courses like Bachelor of Physiotherapy and AYUSH is concerned, there is no cavil of doubt in holding that Govt. does have power to regulate the same.

31. The next question that falls for determination is as to whether making selection to Bachelor of Physiotherapy course on the basis of NEET score is irrational or arbitrary as the same is not based upon any statutory frame work. It is an admitted position that so far as admission to MBBS/BDS and AYUSH courses is concerned, the same has to be made on the basis of National Eligibility-cum-Entrance Test (NEET) as laid down in Indian Medical Council Act, 1956, Dentist Act, 1948 and Indian Medicine Central Council Act, 1970. However, so far as Bachelor of Physiotherapy course is concerned, there is no such statutory requirement. The course of Bachelor of Physiotherapy is governed by the provisions contained in Jammu and Kashmir Para Medical Council Act, 2014. In the

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said Act, there is no requirement of admission through National Eligibility Entrance Test (NEET).

32. Prior to introduction of NEET, the admission to the Bachelor of Physiotherapy course was being made on the basis of a Common Entrance Test that was being conducted by J&K BOPEE, which is a body created under Board of Professional Entrance Examination Act, 2002. The said body has been constituted for the purpose of conducting entrance tests and making selection for admission to various professional courses. In fact, the Common Entrance Test was being conducted by the J&K BOPEE prior to introduction of NEET for the professional courses like MD/MS/Diploma Courts (PG)/ MBBS/BDS/BAMS and diploma courses. There was one common test for under-graduate courses like MBBS/BAMS and Bachelor of Physiotherapy. Eligibility for all these courses as per University statute was 10+2 with 50% marks for general category candidates and 40% marks for reserved category candidates. After the introduction of NEET, a Common Entrance Test at all India level is being conducted for admission to MBBS, BDS and AYUSH courses. The respondent-J&K BOPEE instead of conducting a separate entrance test for admission to Bachelor of Physiotherapy course, is making admission to said course on the basis of NEET score. The same may not be a statutory requirement

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but the question arises whether doing so is irrational and arbitrary so as to render the said decision of the respondents which has been made vide impugned Govt. Order dated 04.07.2019 liable to quashment.

33. As already noted, the Government has absolute right to regulate the mechanism for admission to various professional colleges/courses. This would include admission to even unaided private institutions. While right to establish and manage educational institution is guaranteed under Article 19(1)(g) of the Constitution but the same is subject to reasonable restrictions. The State is, therefore, within its jurisdiction to impose reasonable restrictions by laying down policy and regulations for operating these institutions. In the instant case, if it is shown that the regulations laid down by the Government for admitting the students to the BPT courses on the basis of NEET score is an unreasonable restriction only then the impugned action of the respondents can be termed as violative of Article 19(1)(g) of the Constitution.

34. There cannot be any dispute to the position that the concern of the petitioner-Institute as well as of the respondents should be to impart standard education to the students and merit should be the primary consideration in admission of students. For the said purpose, there has to be a mechanism in place to

scrutinize the merit of the eligible candidates. Even prior to the introduction of NEET, the candidates had to undergo entrance test for the purpose of seeking admission to BPT course. The only difference is that now instead of undergoing an entrance test at State level, the candidates have to undergo entrance test at all India level. Once it is not in dispute that holding of an entrance test is necessary to attract best talent for admission to BPT course, it hardly makes any difference whether the said test is conducted at the UT level or the same is conducted at all India level. In fact when the petitioner Institute is pleading before this Court for permission to make admission of the candidates at all India level without restriction as to domicile of the candidates and has even challenged the said restriction, it will be in the best interest of the petitioner that entrance test is conducted at all India level, instead of conducting a separate test at the State level. There is already in place a test for admission to under-graduate medical courses called NEET. On the basis of the merit obtained by the candidates in the said test, admission can easily be made to BPT course as well. This, in no manner, appears to be irrational or an unreasonable restriction on the right of the petitioner-Institute to carry on its occupation.

35. The contention of the petitioner that in most of the other states, there is no requirement of appearing in NEET for

admission to BPT course and, therefore, the same yardstick should be applied in the UT of J&K also is misconceived. Merely because certain states are making admission to BPT course either on the basis of merit obtained in the qualifying examination or on the basis of State level common entrance test does not debar the respondents from resorting to admission on the basis of NEET. In fact, some of the states like Delhi and Karnataka have made NEET mandatory for Physiotherapy courses as well. By making NEET mandatory for such courses, quality of students will be ensured as NEET will filter out undeserving students. This will also improve the overall quality of the students admitting to the course thereby raising academic standards and enhancing professional qualifications. In fact, there is a need to make a uniform admission process even for BPT course, which can be done in a phased manner so that there is transparency in admission of medical and para-medical courses. Such a step would spare the medical aspirants from the burden of appearing for multiple entrance examinations, which are conducted by various states and private universities offering BPT course. If the Government of Jammu and Kashmir has taken a lead in this direction, no fault can be found in the said action of the respondents.

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36. The concern of the petitioner-College is that there may not be enough students available, who have qualified NEET for their admission to BPT courses as the candidates, who secure high marks generally do not opt for BPT courses as they get absorbed in other courses. The concern of the petitioner-College appears to be real but private colleges can be allowed to admit candidates, who have appeared for the NEET examination even if they do not have a high score so as to enable them to fill the seats. An appropriate decision for lowering the merit obtained in NEET can be taken in each session so as to avoid wastage of seats. This will take care of the concern of the petitioner and similarly situated colleges.

37. So far as the challenge to S.O 175 dated 20.05.2020, which makes it mandatory for a candidate appearing in entrance test conducted by J&K BOPEE to be a domicile of UT of J&K is concerned, in this regard the contention of the petitioner is that by providing 100% reservation to the residents of UT of J&K, the respondents have made it impossible to admit the candidates from other parts of the country in BPT course as well as post-graduate courses of AYUSH, which has resulted in a significant number of seats remaining vacant. According to the petitioner-College, this is a loss of national resources besides being an unreasonable restriction on the right of the petitioner to carry on the occupation of running the college.

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38. So far as impugned notification dated 20.05.2020 is concerned, it has been issued by the Government in exercise of its power under Section 23 of the J&K Board of Professional Entrance Examination Act, 2002. It provides that any candidate interested in appearing in any entrance test conducted by the Board must possess domicile certificate issued under J&K Grant of Domicile Certificate (Procedure) Rules, 2020 meaning thereby that any candidate, who does not possess such a certificate, cannot appear in any entrance test conducted by J&K BOPEE. NEET is not being conducted by respondent No. 2-J&K BOPEE as the same is being conducted by National Testing Agency (NTA). So, strictly speaking the aforesaid notification may not apply to admissions that were made on the basis of NEET. However, it appears that under the garb of impugned notification dated 20.05.2020, the respondents are not allowing admission to professional courses to the candidates, who are residing in other parts of the country. The question arises as to whether imposition of such a restriction is legally permissible.

39. The Supreme Court in the case of **"Dr. Pradeep Jain & Ors Vs. Union of India & Ors"**, **(1984) 3 SCC 654** had an occasion to deliberate on the issue of permissible extent of reservation based on residence. In the said case, the Supreme Court had opined that reservation in no event should exhaust

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the outer limit of 70% of the open seats after taking into account other kinds of reservations validly made. Para (21) of the said judgment is relevant to the context and the same is reproduced as under:

> *21. But, then to what extent can reservation based on residence requirement within the State or on institutional preference for students passing the qualifying examination held by the university or the State be regarded as constitutionally permissible? It is not possible to provide a categorical answer to this question for, as pointed out by the policy statement of the Government of India, the extent of such reservation "would depend on several factors including opportunities for professional education in that particular area, the extent of competition, level of educational development of the area and other relevant factors". It may be that in a State where the level of educational development is woefully low, there are comparatively inadequate opportunities for training in the medical speciality and there is large scale social and economic backwardness, there may be justification for reservation of a higher percentage of seats in the medical colleges in the State and such higher percentage may not militate against "the equality mandate viewed in the perspective of social justice". So many variables depending on social and economic facts in the context of educational opportunities would enter into the determination of the question as to what in the case of any particular State, should be the limit of reservation based on residence requirement within the State or on institutional preference. But, in our opinion, such reservation should in no event exceed the outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservations validly made. The Medical Education Review Committee has suggested that the outer limit should not exceed 75 per cent but we are of the view that it would be fair and just to fix the outer limit at 70 per cent. We are laying down this outer limit of reservation in an attempt to reconcile the apparently conflicting claims of equality and excellence. We may make it clear that this outer limit fixed by us will be subject to any reduction or attenuation which may be made by the Indian Medical Council*

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which is the statutory body of medical practitioners whose functional obligations include setting standards for medical education and providing for its regulation and coordination. We are of the opinion that this outer limit fixed by us must gradually over the years be progressively reduced but that is a task which would have to be performed by the Indian Medical Council. We would direct the Indian Medical Council to consider within a period of nine months from today whether the outer limit of 70 per cent fixed by us needs to be reduced and if the Indian Medical Council determines a shorter outer limit, it will be binding on the States and the Union Territories. We would also direct the Indian Medical Council to subject the outer limit so fixed to reconsideration at the end of every three years but in no event should the outer limit exceed 70 per cent fixed by us. The result is that in any event at least 30 per cent of the open seats shall be available for admission of students on all-India basis irrespective of the State or university from which they come and such admissions shall be granted purely on merit on the basis of either all India entrance examination or entrance examination to be held by the State. Of course, we need not add that even where reservation on the basis of residence requirement or institutional preference is made in accordance with the directions given in this judgment, admissions from the source or sources indicated by such reservation shall be based only on merit, because the object must be to select the best and most meritorious students from within such source or sources."

40. The aforesaid observations were made by the Supreme Court in the context of admissions to medical courses. The Supreme Court further went on to condemn the wholesale reservation made by some of the State Governments on the basis of domicile or residence requirement within the State or on the basis of institutional preference for students, who have passed the qualifying examination held by the University or the State excluding all students not satisfying this requirement

regardless of merit. The Supreme Court went on to declare that such wholesale reservation is unconstitutional and void being violative of Article 14 of the Constitution. The aforesaid ratio was followed by the Supreme Court in the later judgment of **"Rajdeep Ghosh Vs. State of Assam"**, (2018) 17 SC 524. This case was also relating to field of medical education.

41. From the foregoing analysis of legal position, it is clear that while reservation on the basis of domicile is permissible as a particular State or UT has interest in such reservation so that the local candidates are benefitted. Once the State or UT has incurred expenditure in creating these institutions, it is open to a State or UT to reserve a portion of seats for admission to medical institutions to local candidates so as to ensure that the State benefits from the medical professionals who are trained in these institutions but such reservation cannot be wholesale as the same would be violative of Article 14 of the Constitution

42. Now coming to the facts of the present case, so far as impugned Notification dated 20.05.2020 is concerned, to the extent it relates to admission to under-graduate medical courses like MBBS, BDS and ASU, in State/UT Quota, the notification cannot be termed as unreasonable. However, when it comes to courses like Bachelor of Physiotherapy for

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which admission is not statutorily required to be made on the basis of NEET score, disallowing the candidates belonging to other parts of the country from competing, certainly appears to be an unreasonable restriction. In order to remove the blanket nature of this restriction, while admission in the first instance can be made to different courses from amongst the candidates belonging to UT of J&K but once the seats remain unfilled, the restriction regarding domicile is required to be relaxed. It will serve twin purposes, *firstly,* that the impugned Notification dated 20.05.2020 would not be exposed to challenge on the basis of unreasonable restriction on freedom to carry on occupation on the ground of 100% reservation based on domicile, and *secondly,* the seats, which are left unfilled in any course, would be filled up by the candidates from outside the UT of J&K thereby avoiding a situation of loss of resources.

43. The Supreme Court in the case of **"Index Medical College, Hospital and Research Centre Vs. State of Madha Pradesh & Ors"** (2023) 11 SCC 570 held that right to admit students as part of management's right to occupation under Article 19(1)(g) of the Constitution and the rule, which prevents the management from filling up of the seats in medical course, amounts to unreasonable restriction violative of Articles 14 and 19(1) (g) of the Constitution. In the same judgment, it has

been held that the seats in recognized medical colleges not being filled up is detrimental to public interest and keeping these seats vacant is a huge financial loss to the management of the educational institutions apart from being a national waste of resources.

44. In the face of aforesaid position of law, it is clear that creating a situation whereby the management of a college is forced to keep certain number of seats vacant on account of non-availability of candidates in the face of restrictions imposed by the Government is violative of fundamental right of the management to run educational institution.

45. In the present case, as per the data given by the petitioner, which has been narrated hereinbefore, the seats allocated to the petitioner colleges for BPT course and post-graduate AYUSH course are remaining unfilled every year. This situation has arisen on account of the fact that sufficient number of candidates who are domiciles of UT of J&K are not available for admission to these courses. This not only causes loss to the management of the petitioner-Colleges but it also amounts to waste of national resources. In these circumstances, impugned Notification dated 20.05.2020, with a view to avoid a situation where it is exposed to vice of unreasonable restriction on the right of the petitioner- College

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to run its occupation, is required to be read down by providing that respondent No. 2-J&K BOPEE shall be at liberty to hold counseling for the candidates belonging to other parts of the country if a situation arises where all the seats available in the petitioner-College or similar other colleges are not filled up from amongst the candidates belonging to UT of J&K. This will avoid the wastage of seats besides benefiting the petitioner-Colleges for the purpose of upgrading its infrastructure.

46. In view of what has been discussed hereinbefore, the writ petitions are disposed of with the following directions:

(i) Admission to BPT courses shall continue to be conducted on the basis of score obtained by the candidates in NEET. However, in case sufficient number of candidates, who have qualified the NEET, are not available, the respondent-BOPEE shall fill up the seats of BPT course by lowering down the merit as there is no statutory requirement for qualification of NEET for admission to said course.

(ii) In a case where sufficient number of candidates belonging to UT of Jammu and Kashmir are not available for admission for filling up of the available seats in the BPT course or post-graduate AYUSH course, the Notification S.O 175 dated 20.05.2020 shall stand relaxed and the respondent-BOPEE shall conduct counseling for admission to unfilled seats in

said courses from amongst the candidates belonging to other parts of the country.

(iii) The provisional admission of the candidates made to BPT course in the petitioner-College pursuant to interim orders passed by this Court from time to time shall stand regularized.

(SANJAY DHAR)
JUDGE

JAMMU
18.10.2025
Naresh/Secy.

Whether order is speaking: Yes
Whether order is reportable: Yes

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