

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.06.2016

Delivered on : 29.06.2016

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.14205, 14234 and 14235 of 2016

and

WMP.Nos.12420, 12421, 12432 to 12435 of 2016

Nashath Jinan ..Petitioner in W.P.No.14205/2016

Hridya Haridas ..Petitioner in W.P.No.14234/2016

Minor Govind Ashok
rep. by his Father Asok Kumar K.R.
..Petitioner in W.P.No.14235/2016

Vs.

1.The Government of India,
Rep. by its Secretary,
Ministry of Health and Family Welfare,
New Delhi.

2.The Director,
Jawaharlal Institute of Post Graduate
Medical Education and Research,
Pondicherry.

3.Medical Council of India,
Pocket-14, Sector-8, Dwarka Phase-I,

New Delhi-110 077.

..Respondents in all W.Ps.

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the prospectus issued by the second respondent for the MBBS admission to the 2nd respondent institute for the year 2016 and quash the Clause IV (b) pertaining to Puducherry Unreserved (P-UR) category insofar as it inserts the following additional qualification in the prospectus "children of the said employees should have

studied in the Higher Secondary Course of Two years in any of the schools in the Union Territory of Puducherry and should have passed the Higher Secondary from the same School" and direct the 2nd respondent to admit the petitioner as per the terms of the prospectus issued in the year 2015.

For Petitioner : M/s.P.T.Asha
in all W.Ps. for M/s.Sarvabhauman Associates

For Respondents : Mr.N.Vijayabaskar
in all W.Ps. Central Govt. Standing Counsel for R1

Mr.G.Rajagopalan, Addl. Solicitor General
for Mr.M.T.Arunan for R2
Mr.V.P.Raman for R3

C O M M O N O R D E R

The issues to be decided are common. Therefore, all these writ petitions are disposed of by this common order.

W.P.No.14205 of 2016

2. The petitioner would state that his father Thiru A.P.Ishaque is a permanent Group A employee under the Puducherry Union Territory in the Department of Health and Family Welfare and presently serving as Chief Medical Officer-NFSG in Mahe Region and he is in the service of Puducherry Union Territory Government. The petitioner would further state that in the month of March 2015, the second respondent, namely Jawaharlal Institute of Post Graduate Medical Education and Research [in short "JIPMER"] had called for applications for MBBS course for Pondicherry and Karaikal campus for the academic year 2016 session. The petitioner had obtained prospectus through on-line and on going through the contents, became aware that the second respondent had amended the eligibility criteria/clause for candidates falling under Puducherry Unserved (P-UR) category on the basis of G.O.Ms.No.4, Chief Secretariat (Higher and Technical Education), Puducherry dated 09.02.2016. As per the said Government Order, amendment to Clause 2.5 of the CENTAC Information Bulletin 2015-16 issued, vide G.O.Ms.No.27 dated 01.04.2015 was effected and as the amendment, "Children whose parents are Central Government Servants/State Government Servants/Defense Personnel/Central Parliamilitary Forces/Employees of Public Sector Undertakings wholly or substantially run either by the Puducherry Union Territory Administration, posted and serving in the Puducherry Union Territory for at least a minimum continuous period of three years immediately prior to the last date of submission of application" are eligible and shall apply under the Puducherry quota and it is further stated that "Children of the above said employees should have studied in the Higher Secondary Course of Two years in any of the schools in the Union

Territory of Puducherry and should have also passed the Higher Secondary Examination from the same school. The said Government Order stipulates that the amended clause takes effect from the ensuing academic year 2016-17.

3. The contention put forth by the petitioner is that the impugned clause in the prospectus for admission to MBBS course for the academic year 2016 is in gross violation of Regulation 28 of the JIPMER Regulations, 2008 which clearly provides that any reservation/category is to be in accordance with the general orders issued by the Central Government. The said Government Order is meant for Union Territory of Puducherry administration and there is no need or necessity on the part of the second respondent to adopt the said Government Order and the said adoption was put into effect all of a sudden overlooking the fact that the wards of the above said persons had already studied in schools located outside Mahe on the fond hope that since they fulfill the eligibility criteria as to the period of service rendered by the Government servants etc., they are eligible to be accommodated under the said quota and however like thunder from blue, their aspirations and aim became shattered and therefore, came forward to file these writ petitions challenging the vires of Clause IV(b) of the prospectus issued by the second respondent.

W.P.No.14234 of 2016

4. The petitioner would state that her father Thiru K.B.Haridas is a permanent Group A employee working under the Puducherry Union Territory in the Department of Health and Family Welfare and presently serving as Chief Medical Officer, NFSG in Mahe region and the said service comes within the ambit of Pudicherry Union Territory administration and he is still serving in that capacity. The petitioner also, aggrieved by the insertion of Clause IV(b) in the prospectus for admission to MBBS course for the academic year 2016-17 issued by the second respondent, raised the very same grounds as that of the petitioner in W.P.No.14205 of 2016.

W.P.No.14235 of 2016

5. The petitioner is a minor represented by his father Thiru Ashok Kumar and he has sworn to the affidavit on behalf of his minor son stating among other things that he is a permanent Group A employee under the Puducherry Union Territory in the Department of Health and Family Welfare and presently working as the Chief Medical Officer, NFSG in Mahe region and continues to remain in service as on date. The petitioner also raised very same grounds as that of the petitioners in W.P.Nos.14205 and 14234 of 2016.

6. These writ petitions were entertained on 07.06.2016 and this Court has passed interim orders that the publication of the merit list is subject to the result of the writ petition.

7. Ms.P.T.Asha, learned counsel appearing for the

set of documents as well as the amended Regulations, 2008 of the second respondent and would submit that Regulation 28 of JIPMER Regulations, 2008 speaks about admission to courses of studies and as per Regulation 28(1) "The Institute shall admit students to courses conducted by it and it shall provide in each course of study reservation to persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes or other categories of persons in accordance with the general orders issued by the Central Government from time to time". It is the primordial submission of the learned counsel appearing for the petitioners that in Clause IV(b) of the Prospectus for admission to MBBS - July 2016, nothing has been indicated as to the general orders issued by the Central Government with regard to incorporation/adoption of G.O.Ms.No.04 of the Chief Secretariat (Higher and Technical Education), Puducherry dated 09.02.2016 and in the absence of the same, Clause IV(b) of the Prospectus is to be declared as null and void and since all the petitioners fulfill Clause IV (a), their application is to be considered on merits. It is the further submission of the learned counsel appearing for the petitioners that the decision to adopt the Government Order in the prospectus appears to be taken in the Standing Committee Meeting and such kind of procedure is wholly impermissible in the light of the above said Regulation 28(1) and prays for quashment of the said Clause with a further direction to grant appropriate relief. The learned counsel appearing for the petitioners, in support of her submissions, placed reliance upon the judgments in Minor D.Ram and another v. JIPMER, Pondicherry [(2004) 4 MLJ 472] and The Dean, Jawaharlal Institute of Postgraduate Medical Education and Research (JIPMER) Dhanvantri Nagar Puducherry v. Gogulsagan and another [2015 -2-L.W.171 (DB)].

8. Per contra, Mr.G.Rajagopalan, learned Additional Solicitor General assisted by Mr.M.T.Arunan, learned Standing Counsel appearing for the second respondent has drawn the attention of this Court to the counter affidavits filed in these writ petitions and would submit that as per sub-Section (5) of Section 10 of JIPMER Act, 2008, JIPMER may constitute as many Standing Committees and Adhoc Committees as it thinks fit for exercising any power or discharging any function of the Institute or for inquiring into, or reporting or advising upon, any matter which the Institute may refer to them and under Section 7 of JIPMER Rules, 2008, the Institute may also constitute a Standing Academic Committee for taking policy decisions in academic affairs and Section 4(3) of JIPMER Regulations, 2008, enables the Standing Committee to consider all matters relating to the administration of the academic affairs of the Institute. The learned Additional Solicitor General, on merits of the case, would contend that till 2015, the rule for domicile for children of Central Government/state Government servants etc., was to the effect that for admission, minimum period of one year prior to the last date of submission of application is necessary and vide G.O.Ms.No.4 dated 09.02.2016, the Government of Puducherry thought fit to

amend the same by increasing the continuous period of service from one year to three years prior to the last date of submission and added another clause stating that the children of the above said employees should have studied in the Higher Secondary Course of two years in any of the schools in the Union Territory of Puducherry and should have also passed the Higher Secondary Examination from the same school.

9. The learned Additional Solicitor General would further submit that Section 13 of the JIPMER Act, 2008 deals with functions of JIPMER and as per sub-section (m), JIPMER may reserve at least twenty seats out of every seventy five seats in Undergraduate Courses in the Institute for local applicants and thus, the Statute itself provides for reservation and therefore, the Committee on Academic Advisory matters met under the Chairmanship of the Director of JIPMER on 03.02.2006 and decided to adopt G.O.Ms.No.04 dated 09.02.2016 and it was also placed before the 10th Standing Academic Meeting held on 08.04.2016, wherein the said decision of the Academic Advisory Committee was also approved and though on-line registration commenced on 07.04.2016 and closed on 04.05.2016, the fact remains that before the closure of on-line registration, the Standing Academic Committee has approved the decision of the Academic Advisory Committee. It is the further submission of the learned Additional Solicitor General that Standing Academic Committee consisting of the Professor of JIPMER, New Delhi, Hon'ble Member of Parliament (RS), Puducherry, Vice Chancellor (In-Charge) Pondicherry University, Professor and Head of Pediatric Survey, PGIMER, Former Director, CMC Vellore, Registrar, NIMHANS, Bangalore, Dean (Academics), JIPMER, Director, JIPMER and therefore, such a decision cannot be faulted with. The learned Additional Solicitor General would also submit that Regulation 28 of JIPMER Regulations, 2008 is to be read down for the reason that JIPMER Act itself provides for reservation and therefore, the decision of the Standing Academic Committee merely confirms and enforces the said reservation by adopting G.O.Ms.No.04 dated 09.02.2016 and it also enables the local residents to get admitted under the said quota in JIPMER as it is located at Puducherry and prays for dismissal of this writ petition.

10. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

11. G.O.Ms.No.04, Chief Secretariat (Higher and Technical Education), Puducherry dated 09.02.2016, has amended Clause 2.5 of the CENTAC Information Bulletin 2015-16, issued vide G.O.Ms.No.27 dated 01.04.2015 of the Chief Secretariat (Education) Puducherry and it is relevant to extract the same:

FOR	READ
2.5(C) Children of Central/State Government Servants/Defense Personnel Central Paramilitary Forces/Employees of Public Sector Undertakings wholly or substantially run either by the Puducherry Union Territory Administration posted and serving in the Puducherry UT for at least a minimum period of one year prior to the last date of submission of application	2.5 ©(i) Children whose parents are Central/State Government Servants/Defense Personnel Central Paramilitary Forces/Employees of Public Sector Undertakings wholly or substantially run either by the Central Government or by the Puducherry Union Territory administration, posted and serving in the Puducherry Union Territory for at least a minimum continuous period of three years immediately prior to the last date of submission of application
	(a) Children of the above said employees should have studied in the Higher Secondary Course of Two years in any of the schools in the U.T. of Puducherry and should have also passed the Higher Secondary Examination from the same school.

The Government Order also says that the amended clause shall takes effect from the ensuing academic year 2016-17 onwards.

12. It is pertinent to point out at this juncture that JIPMER is located at Puducherry and Section 13(m) of the JIPMER Act enables JIPMER to reserve at least twenty seats out of every seventy five seats in undergraduate courses in the Institute for local applicants.

13. In D.P.Joshi v. State of Madhya Bharat [(1955) 1 SCR 1215: AIR 1955 SC 334], wherein the Hon'ble Supreme Court of India had upheld the preference on the basis of residence in educational institutions.

14. In Kumari N.Vasundara v. The State of Mysore and another [AIR 1971 SC 1439 (Three Judges)], the constitutional validity of Rule 3 of the Rules for Selection of candidates for admission to Pre-Professional/B.Sc. Part I course leading to MBBS in the Government Medical Colleges and for certain seats in the Private Medical Colleges in the State of Mysore came up for consideration and one of the condition for submitting the application is prescription of period of 10 years prior to the date of application. The Hon'ble Supreme Court of India, in the said decision, has taken into consideration its earlier decision in Chitra Ghosh v. Union of India [(1970) 1 SCR 1070 SC 35] wherein it has been held that the

sources from which students have to be drawn are primarily determined by the authorities who maintain and run the institution and in para 8 held as follows:

" If classification based on residence does not impinge upon the principle of equality enshrined in Article 14 as held by this Court in the decision already cited which is binding upon us, then the further condition of the residence in the State being there for at least ten years would also seem to be equally valid unless it is shown by the petitioner that selection of the period of ten years makes the classification so unreasonable as to render it arbitrary and without any substantial basis or intelligible differentia."

15. In *Pradeep Jain v. Union of India* [AIR (1984) SC 1420], the question arose for consideration was whether residential requirement or institutional preference in admissions to Technical and Medical Colleges can be constitutionally permissible in the light of Article 15(1) and 15(4) of the Constitution of India and it is held that insofar as admissions to educational institutions such as Medical Colleges are concerned, Article 16(2) has no application and residential requirement can not per se be condemned as unconstitutional and at least so far as admission to MBBS course is concerned, residence requirement in a State can be introduced as a condition for admission to MBBS Course.

16. In *Anant Madaan v State of Haryana and Others* [AIR 1995 SC 955], Civil Appeals in the above said decision arose out of the decision of the Punjab and Haryana High Court upholding the validity of eligibility criteria prescribed for the year 1994 for the entrance test to be conducted for the State of Haryana for the purpose of admission to Medical and Dental Colleges in the State of Haryana and one of the eligibility conditions is that the candidates who have studied 10th, 10+1 and 10+2 classes as regular candidates in recognised institutions in Haryana and it was issued by way of Corrigendum to original eligibility conditions. A Division Bench of Punjab and Haryana High Court had given a split verdict and the third judge who concurred with one of the Judges held that the condition requiring a candidate to have studied in the 10th, 10+1 and 10+2 classes in recognised institutions in Haryana was valid and therefore, the said issued reached the portals of the Hon'ble Supreme Court of India. The question arose before the Hon'ble Supreme Court of India was "Whether the condition requiring a candidate to have studied in 10th, 10+1 and 10+2 classes in recognised institutions in the State of Haryana, can be considered as arbitrary or unreasonable? The Hon'ble Supreme Court of India in the said decision has taken into consideration it's decisions in *D.P.Joshi v. State of Madhya Bharat* [AIR 1955 SC 334], *Jagdish Saran v. Union of India* [AIR 1980 SC 820] and *Dr.Pradeep Jain v. Union of India* [AIR 1984 SC 1420] and held

" 10. In the present case, the reservation which has been made on the basis of candidates having studied for the preceding 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. This 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. In *Minor D.Ram and another v. JIPMER, Pondicherry* [(2004) 4 MLJ 472], a writ petition was filed by the petitioner belonging to Scheduled Caste born in Puducherry, challenging the constitutional validity of Clause 3.1 of the prospectus on the ground that the definition denies the Pondicherry Scheduled Caste persons who have Pondicherry as their place of origin their right, that a person migrating from one State to another State, Union Territory cannot carry the benefit of reservation he has in the State to the place where he has migrated. Another writ petition challenged the vires of the prospectus on the ground that while special concession has been shown to the Pondicherry Scheduled Caste, no such concession has been made to Scheduled Tribes. This Court, in the above cited judgment has rejected the challenge by dismissing the writ petitions and it is to be noted at this juncture that the learned Judge has also noted about the reservation for the residents of Puducherry and General Scheduled Castes for 20 seats in terms of Rule 31(5) of the Prospectus for the year 2005.

18. In *The Dean, JIPMER, Puducherry v. Gogulsugan and another* [2015-2-L.W. 171], a writ petition was filed to change the category from Pondicherry Unreserved (P.UR) to Puducherry Other Backward Class (P.OBC) and though the Court found that the caste, namely Kongu Vellalar community is not included in the Central List, has taken into consideration of the fact that a candidate has been admitted under the said category, did not disturb admission. In the considered opinion of this Court, the judgments cited by the learned counsel appearing for the petitioners have no application to the facts of the present case.

19. The primordial submission made by the learned counsel appearing for the petitioners is that as per Regulation 28 of JIPMER Regulations, 2008, reservation with regard to admission to courses of studies shall be done in accordance with the general orders issued by the Central Government from time to time and while adopting G.O.Ms.No.4 dated 09.02.2016, JIPMER did not do so. In the considered opinion of the Court, the said submission lacks merit for the following reasons.

20. Section 25 of the JIPMER Act says that the Institute shall carry out such direction as may be issued to it from time to time by the Central Government for the efficient administration of the JIPMER Act and as per Section 26, if in,

or in connection with, the exercise of its powers and discharge of its functions by the Institute under this Act, any dispute arises between the Institute and the Central Government, the decision of the Central Government thereon shall be final and Section 30 speaks about power to make regulations. Accordingly, JIPMER Regulations, 2008 came to be framed. Regulation 13 speaks about Constitution of Governing Body. Regulation 24 speaks about Standing and Ad-hoc Committees and as per sub-regulation (3), Standing Academic Committee shall consider all matters relating to the administration of the academic affairs of the Institute.

21. In the case on hand, this Court has already held that reservation for local residents is provided under Section 13 (m) of the JIPMER Act. The JIPMER institution is located at Puducherry and therefore, Academic Advisory Committee, in its meeting held on 02.03.2016, took a decision to adopt the said Government Order for admission under the seats reserved for Union Territory of Puducherry and it was forwarded to the Standing Academic Committee meeting for approval and ratification and the said Committee in its 10th Meeting held on 08.04.2016, had ratified the same.

22. As per Regulation 28 of JIPMER Regulations, 2008, the Institute shall admit students to courses conducted by it and it shall provide in each course of study reservation to persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes or other categories of persons in accordance with the general orders issued by the Central Government from time to time. As already pointed out, Section 13(m) of the JIPMER Act provides for reservation to local residents/local applicants and such a kind of reservation is in vogue for quite long time and in the judgment in *Minor D.Ram and another v. JIPMER, Pondicherry* [(2004) 4 MLJ 472] relied on by the learned counsel appearing for the petitioners, such a reservation is also mentioned.

23. The petitioners' did not challenge the legality of G.O.Ms.No.04 issued by Chief Secretariat (Higher and Technical Education), Government of Puducherry dated 09.02.2016 and the purport of the same was considered by this Court in the order dated 24.06.2016 made in W.P.No.18820 of 2016 [*J.Jayashree and another v. The Coordinator (Admission), Government of Puducherry and another*], wherein the Union Territory of Puducherry has filed a counter affidavit and spelt out reasons for passing the said Government Order and it is relevant to extract the following para of the said order:

"5....Mr.M.Govindaraj, learned Special Government Pleader assisted by Mrs.Reena Iswariya, learned Additional Government Pleader (Pondicherry) appearing for the respondents has drawn the attention of this Court to the counter affidavit of the respondents and would submit that the status of Migrant Scheduled Caste came up for consideration in W.A.No.1438 of 2015 wherein this Court while upholding the order passed by the learned Single

Judge, after taking note of earlier Clause 2.5(c) and found that it is discriminatory in nature by providing that the natives of Puducherry must have continuous residence of 5 years and others must have only one year and not even actual residence for the said period and it is in violation of Article 14 of the Constitution of India and therefore, felt necessary to adapt Clause 2.5. The second respondent in compliance of the order, took a decision to pass G.O.Ms.No.04 dated 09.02.2016 and it was also incorporated in Clause 2.5. of the Information Bulletin of the first respondent for the academic year 2015-2016. It is the further submission of the learned Additional Government Pleader that justification for incorporating the clause is that out of 85% of the seats available for the students of Puducherry, wards of the Central and State Government servants are taking considerable number of seats and the said tendency is also on the increase and the observations of this Court in the above cited order was an eye opener and accordingly, the second respondent took a decision to pass the said Government Order and it was also adopted by the first respondent...."

The respondents 2 and 3/JIPMER had also thought fit to extend the same in the light of the powers conferred under the Regulations and thus taken care of the interest of the local residents also.

24. The minutes of the Academic Advisory Committee held on 02.03.2016 as well as the Standing Academic Committee held on 08.04.2016 were placed before this Court and a perusal of the same would disclose that a decision has been taken to adopt the said Government Order and such a policy decision cannot be faulted with and is also in tune with Section 13(m) of the JIPMER Act. The petitioners have not been put to prejudice for the reason that they can apply under All India quota.

25. In *Anant Madaan v State of Haryana and Others* [AIR 1995 SC 955], such a kind of reservation has been upheld and it was held that it cannot be considered unreasonable or violative of Article 14 of the Constitution of India. Therefore, viewing from any angle, this Court is of the considered opinion that it is open to JIPMER to adopt the said Government Order and they have done so by taking into consideration the interest and welfare of the local residents and may be for the reason that the Institute itself is located at Puducherry. Therefore, the said Policy of JIPMER cannot be faulted with.

26. It is also a well settled position of law that interference by this Court in policy decision under Article 226 of the Constitution of India, is very limited.

27. In the light of the reasons assigned above, these writ petitions deserve dismissal. Accordingly, all the writ petitions are dismissed. No costs. Interim orders are vacated. Consequently, connected miscellaneous petitions are closed.

jvm

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

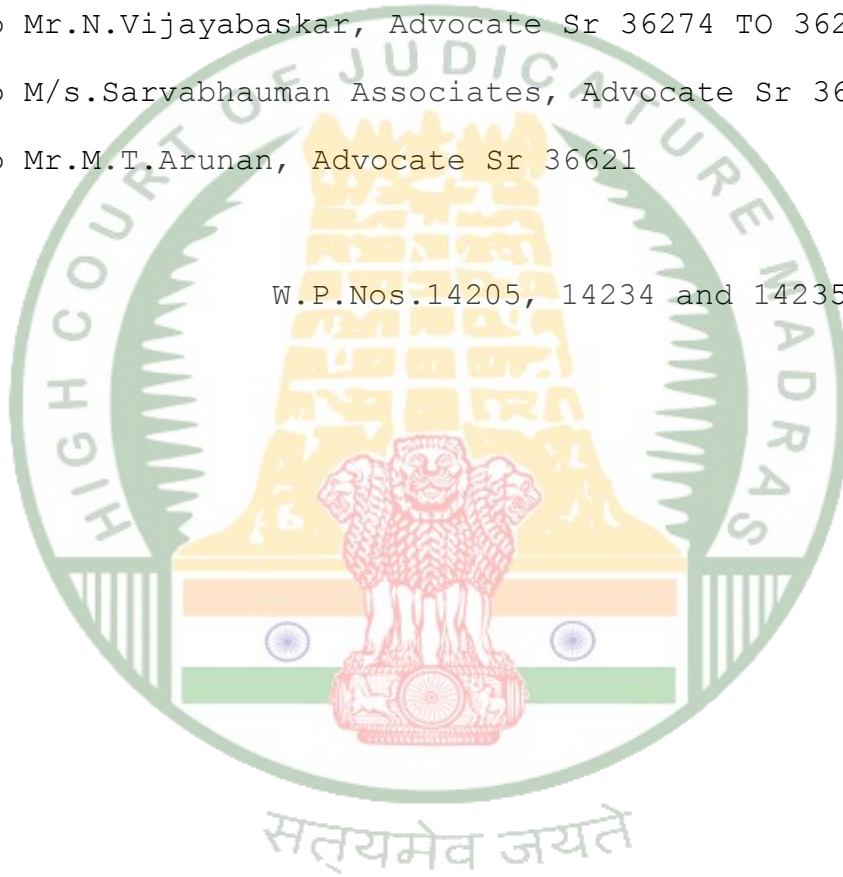
+ 3 ccs to Mr.N.Vijayabaskar, Advocate Sr 36274 TO 36276

+ 3 ccs to M/s.Sarvabhauman Associates, Advocate Sr 36416

+ 2 ccs to Mr.M.T.Arunan, Advocate Sr 36621

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