

CWP No.23156 of 2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.23156 of 2015
Date of decision:04.07.2016**

Mata Sundri Educational Welfare Society (Regd) ...Petitioner
Versus
Union of India and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. N.K.Setia, Advocate,
for the petitioner.

Ms. Balwinder Kaur, Senior Panel Counsel
for respondent No.1.

Mr. Munish Jolly, Advocate,
for respondent No.2.

Mr. Sarabjit Singh, Advocate,
for respondent No.5.

Rakesh Kumar Jain, J.

This order shall dispose of two petitions bearing CWP No.23156 of 2015 titled as “Mata Sundri Educational Welfare Society (Regd) vs. Union of India” (hereinafter referred to as the “first petition”) and CWP No.22386 of 2015 titled as “Mamta Devi and another vs. Indian Nursing Council and others” (hereinafter referred to as the “second petition”) as the issue involved in both the cases is the same. The first petition is filed by the institute, whereas the second petition is filed by the students but their grievance is common against the validity of the circular

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dated 25.06.2015 issued by the Indian Nursing Council (hereinafter referred to as the “INC”). However, for the sake of convenience, the facts are being extracted from the first petition.

In brief, the petitioner is a society formed in 2005 and is registered under the Societies Registration Act, 1860, with an object of imparting education in nursing sector by starting ANM (Auxiliary Nursing and Midwives) and GNM (General Nursing and Midwifery) courses. The INC is established under the Indian Nursing Council Act, 1947. The INC is the apex body for regulating the training for nurses, midwives and health visitors, whereas the Punjab Nurses Registration Council is the affiliating body and is responsible for conducting the examinations in the States of Punjab and Jammu and Kashmir. The ANM course was started by the Government of India vide notification dated 22.12.2006 and was published on 02.01.2007. It is alleged that according to the said notification, the terms and conditions for the purpose of admission in the ANM course was provided as under:-

“Admission Terms and Conditions

1. The minimum age for admission shall be 15 years on or before 31st December of the year in which admission is sought.
2. The maximum age for admission shall be 35 years.
3. The minimum educational requirements shall be passing of : “Secondary School Certificate Examination (10 years course), 10th class or central board secondary education or a recognized equivalent public examination. Subjects of study must be equivalents by the CBSE for class X with minimum 45%.

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Admission is subject to satisfactory of medical examination report.”

The INC passed a resolution on 29.10.2014 which has been approved by its Governing Body for improvement of Nursing Educational Standards and Clause 23 of the said resolution is reproduced as under:-

- “23. Admission criteria for ANM/GNM and B.Sc. (N)
- ii. ANM
- * 10+2 from recognized Board.
 - * Candidates are also eligible from State Open School recognized by State Government and National Institute of Open School (NIOS) recognized by Central Government.
 - * 17 years as on 31st December.”

However, on 25.06.2015, the INC has issued the impugned circular requiring that the admission to ANM programme in all government and private institutions shall be made on the basis of the following criteria:-

- “1. Admission is only restricted to the students domicile of the State.
2. Medium of Instruction is regional language with technical terms also taught in English Language.
3. Students from other States er. North East States to Karnataka is against the basic government policy of ANM Educational Programme, where ANMs are meant to be prepared for the State and selected for job from the local community so as to provide continued services in SC, PHC and CHC.”

Counsel for the petitioner has submitted that the said circular envisages 100% reservation on the basis of place of residence/birth and imposed a complete ban on admission for the students of the other States, which is contrary to the judgment rendered by the Supreme Court in the

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case of **Dr. Pardeep Jain etc. etc. vs. Union of India and others**, 1984
AIR (SC) 1420.

On the other hand, the case set up by the INC is that the impugned circular has been issued in public interest, within its powers available with it, flowing from the Indian Nursing Council Act, 1947. It is submitted that the main purpose and object for issuing the impugned circular dated 25.06.2015 is to ensure that the students acquiring ANM degrees are suitably employed and placed within the State and community to which they belong. The circular, which is restricted to only ANM course and not to any other nursing course, is meant to ensure that the students getting the certificate in ANM are employed in Primary Health Centre's of the States to which they belong and where the need is paramount for such placement and it is of utmost importance so that the vision of providing basic health care like assistance in delivery is reached to remote parts of the country. It is also submitted that the medium of instruction for ANM course is the regional language from where the students come from and since the medium is their mother tongue, it is practically impossible for the students from other States with different mother tongues to pursue the ANM course taught in some other regional language. It is also submitted that the grant of ANM certificate is not an empty formality and it imparts requisite skill in health care most notably in maternity care and this is possible only when the students are imparted the training in the language familiar to them. It is, thus, submitted that the circular dated 25.06.2015 does not discriminate against any citizen on the ground of sex, religion etc. and only a reasonable

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restriction of domicile has been imposed at the stage of admission, which is permissible.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The petitioners are aggrieved only in respect of the first condition of the impugned circular where the admissions have been restricted to the students who are domicile of the State because in the second petition, the petitioners have alleged that they belong to District Sirsa in the State of Haryana, whereas the R.P. Institute of Nursing is in Tehsil Abohar, District Fazilka and the students of District Sirsa would face no difficulty in medium of instruction in the regional language because Punjabi language is spoken in Sirsa as well.

Be that as it may, the only question which is involved in this petition is that whether a complete restriction can be imposed in respect of admission on the basis of domicile of the State?

Counsel for the petitioner has relied upon a decision of this Court rendered in the case of **Hari Singh Nalwa Trust (Regd.) vs. State of Haryana**, CWP No.23829 of 2014, decided on 04.12.2014, in which the issue was regarding admission to the D.Ed. course to the domicile of Haryana. The said condition was struck down by this Court on the basis of the decision of the Supreme Court in **Dr. Pradeep Jain's case (supra)**.

In **Dr. Pradeep Jain's case (supra)**, it has been held that “*now it is clear on a reading of the Constitution that it recognises only one domicile, namely, domicile in India. Article 5 of the Constitution is clear*”

and explicit on this point and it refers only to one domicile, namely, "domicile in the territory of India". It is further observed that "it is dangerous to use a legal concept for conveying a sense different from that which is ordinarily associated with it as a result of legal usage over the years. Therefore, it is strongly urged upon the State Government to exercise this wrong use of the expression 'domicile' from the rules regulating admissions to their educational institutions and particularly medical colleges and to desist from introducing and maintaining domiciliary requirement as a condition of eligibility for such admissions".

However, in respect of considering the word "domicile" as residential requirement, the Supreme Court further held that *"we agree wholly with these observations made by the learned Judge and we unreservedly condemn 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. We declare such wholesale reservation to be unconstitutional and void as being in violation of Article 14 of the Constitution"*.

It may be pointed out that the Supreme Court has held that the residential requirement could be there upto some extent and not as a whole.

Thus, keeping in view the law laid down by the Supreme Court in **Dr. Pradeep Jain's case (supra)**, the restriction/reservation for admission to the course of ANM only for the students who are domicile of

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the State of Punjab is patently illegal and is in violation of Article 14 of the Constitution of India.

Consequently, both the writ petitions are hereby allowed and the impugned circular dated 25.06.2015, restricting the admission in the ANM course for the students who are domicile of the State of Punjab, is hereby quashed.

July 04, 2016
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(Rakesh Kumar Jain)
Judge