

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 07.04.2016.
LPA No.595 of 2015 (O&M)

(1)

Varun Khullar and others

....Appellants

Vs.

State of Punjab and others

...Respondents

(2)

LPA No.671 of 2015 (O&M)

State of Punjab and another

....Appellants

Vs.

Dr. Mitthat and others

...Respondents

(3)

LPA No.521 of 2016 (O&M)

Arunesh Gupta

....Appellant

Vs.

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Sehaj Bir Singh, Advocate for the appellant(s) in
LPA No.595 of 2015 and LPA No.521 of 2016.

Mr. Kamal Sehgal, Addl. AG, Punjab for the appellants in
LPA No.671 of 2015; respondent No.1 in LPA No.595 of
2015 and for respondents No.1 and 2 in LPA No.521 of
2016.

Mr. Gautam Pathania, Advocate for Baba Farid University -
respondent No.2 in LPA No.595 of 2015; respondent No.13
in LPA No.671 of 2015 and respondent No.3 in LPA No.521
of 2016.

Mr. Gagneshwar Walia, Advocate for respondent No.3 -
Medical Council of India in LPA No.595 of 2015.

Mr. Gurminder Singh, Senior Advocate with
Mr. R.P.S. Bara, Advocate for respondents No.11 to 22 in
LPA No.595 of 2015; for respondents No.4 to 21 in
LPA No.521 of 2016 and for respondents No.1 to 12 in
LPA No.671 of 2015.

S.S. Saron, J.

This order will dispose of letters patent appeals titled 'Varun Khullar and others v. State of Punjab and others' (LPA No.595 of 2015 arising out of CWP No.4761 of 2015) and 'State of Punjab and another v. Dr. Mitthat and others' (LPA No.671 of 2015 arising out of CWP No.4324 of 2015) as these arise out of the same judgment and order dated 13.04.2015 passed in Dr. Mitthat v. State of Punjab, 2015 (2) SCT 734, and also dispose of letters patent appeal titled 'Arunesh Gupta v. State of Punjab and others' (LPA No.521 of 2016) arising out of judgment dated 31.03.2016 passed by the learned Single Judge in the case of Dr. Bal Jaskaran Singh and others v. State of Punjab and others, CWP No.4036 of 2016, which has been disposed of in terms of the judgment in Dr. Mitthat's case (supra). The learned Single Judge in terms of the impugned judgment dated 13.04.2015 in the case of Dr. Mitthat (supra) disposed of six petitions filed by the petitioners seeking admissions to the Post Graduate ('PG' - for short) Courses in Medical Colleges/Institutions in the State of Punjab.

Dr. Mitthat and others filed a petition (CWP No.4324 of 2015) in this Court seeking quashing of clause/para 27 (I) of the Notification dated 25.02.2015 issued by the Government of Punjab, Department of Medical Education and Research and incorporated in Part-B of the Prospectus issued by the Baba Farid University of Health Sciences, Faridkot ('Baba Farid University' - for short) whereby the entire 40% of the 'open category' seats of State quota seats had been reserved for students having Punjab Resident status/domicile alleging the same to be violative of Article 14 of the

Constitution of India and also for quashing the said clause/para 27 (I) of the Notification dated 25.02.2015 and also incorporated in Part-B of the Baba Farid University Prospectus whereby 60% of the State quota seats had been reserved in the PG Degree Courses for in-service Medical Officers serving the State Government, alleging the same to be excessive and against the provisions of Regulation 9 of the Post Graduate Medical Education Regulations, 2000 ('2000 Regulations' - for short) wherein reservation it is stated, is provided only for the PG Diploma Courses and not for the PG Degree Courses. A further direction was sought against the official respondents in the writ petition to fill up all State and Government quota seats other than the seats reserved for in-service doctors on the basis of 'institutional preferences' from amongst the graduates from Medical Colleges affiliated to Baba Farid University as earmarking of seats for the Punjab residents was illegal.

Varun Khullar and other petitioners filed CWP No.4761 of 2015 praying for setting aside the new/fresh condition imposed in Clause 27 (I) of the Notification dated 25.02.2015 whereby admissions to the postgraduate degree courses in Government Medical/Dental Colleges of Amritsar, Patiala and Faridkot and further reservation to the extent of one half (50%) out of the 40% 'open category' seats of the State quota had been given on the basis of 'institutional preference' for those candidates who passed their qualifying examination from the Baba Farid University having been issued mid-stream. In the alternative, it was prayed that the newly incorporated Institutional Reservation to the extent of one half (50%) of the 40% 'open category' seats of the State quota

should be applied in such a manner that the Graduates from the Baba Farid University are admitted only against their own quota i.e. 50% (20% of the overall intake for PG Courses) leaving remaining 50% (20% of the overall intake for PG Courses) for Punjab Residential status holders/Graduates/MBBS from Universities other than the Baba Farid University.

Dr. Bal Jaskaran Singh and seventeen others filed CWP No.4036 of 2016 seeking quashing of clause/para 20 (I) of the notification dated 30.12.2015 issued by the Government of Punjab, Department of Medical Educational and Research (Health III Branch), which was incorporated in Part-B of the Prospectus dated 05.01.2016 issued by the Baba Farid University whereby the entire 40% State quota seats had been reserved for students having Punjab Resident status/domicile and also for quashing the recommendations dated 07.09.2015 of the Highly Qualified Committee constituted by the Government of Punjab, Department of Medical Education and Research on 30.04.2015 for determining the percentage of reservation required for in-service Punjab Civil Medical Services ('PCMS' - for short) doctors whereby 60% State quota seats had been reserved for the Medical Officers serving in the State Government in PG Degree Courses as the same was excessive and against Regulation 9 of the 2000 Regulations.

The writ petition filed by Dr. Bal Jaskaran Singh and others was allowed by the learned Single Judge vide judgment dated 31.03.2016 on the basis of the decision in Dr. Mitthat's case (supra). Dr. Arunesh Gupta - appellant in LPA No.521 of 2016 was

not a party in the writ petition filed by Dr. Bal Jaskaran Singh and

others (supra); however, he has filed the letters patent appeal aggrieved against the said decision whereby the reservation/ earmarking of the seats for Punjab residents had been quashed. Besides, he has also been impleaded as an intervener in the LPA filed by Varun Khullar and others.

The petitioners No.2 to 9 in Dr. Mitthat's case (supra) were residents of State of Punjab, petitioners No.10 and 11 were residents of State of Haryana and petitioners No.1 and 12 were residents of Chandigarh. They being aggrieved against the action of the State Government taken vide notification dated 25.02.2015, which had been further incorporated in the Prospectus issued by the Baba Farid University, in terms of which 40% State quota seats in PG Degree Courses were reserved for candidates having Punjab Resident status/domicile, assailed the same. Their further grievance was that the State Government vide the same notification had reserved 60% seats in PG Degree Courses for in-service PCMS doctors who were employed with the State Government whereas Regulation 9 of the 2000 Regulations stipulated that 50% of the seats in PG Diploma Courses shall be reserved for Medical Officers in Government service and there was no reservation provided for in-service Government doctors in the PG Degree Courses. Therefore, the action of the official respondents providing 60% reservation in the PG Degree Courses to the in-service Medical Officers was against the statutory and mandatory Regulations issued by the Medical Council of India.

The petitioners in Varun Khullar's case (supra) stated that they were *bona fide* residents of Punjab but had done their

MBBS/BDS Courses, which was the eligibility for seeking admissions to Post Graduate Medical/Dental Colleges, from outside the State of Punjab. They were aggrieved against the new norms providing for further reservations to the extent of one-half (50%) out of 40% 'open category' seats of the State quota on the basis of 'institutional preference' for those candidates who had passed their qualifying examinations from Baba Farid University that had been made in the midstream and during the pendency of procedure for finalization of selection for admission to PG courses.

The petitioners No.1 to 6 and 8 to 18 in the case of Dr. Bal Jaskaran Singh (supra) were residents of State of Punjab while petitioner No.7 was resident of Haryana. They were aggrieved by the action of the State Government whereby vide notification dated 30.12.2015, which was incorporated in Part-B of the Prospectus issued by the Baba Farid University, had made reservations for candidates having Punjab Resident status/domicile against the open seats of the State quota in the PG Degree Courses and assailed the same. Besides, they sought quashing of the recommendations dated 07.09.2015 of the Highly Qualified Committee constituted by the Government of Punjab, Department of Medical Education and Research for determining the percentage of reservation required for in-service PCMS doctors which recommended reservation to the extent of 60% for Medical Officers serving in the State Government in the PG Degree Courses alleging the same to be excessive and against Regulation 9 of the 2000 Regulations.

The learned Single Judge in pursuance of its impugned judgment dated 13.04.2015 in Dr. Mitthat's case (supra) held that

the reservation on the basis of residence in the PG Medical Courses, provided in the notification dated 25.02.2015 and the Prospectus issued by the University, was illegal.

As regards the 'institutional preference', it was held that the reservations on the basis of 'institutional preference' provided in the notifications dated 25.02.2015 and 25.03.2015 and in the Prospectus issued by the Baba Farid University were legal and justified. These were accordingly to continue. The challenge to the reservation to the extent of 60% in PG Degree Course out of the State quota seats for in-service PCMS doctors being excessive was referred to a Highly Qualified Committee.

Consequently, the petition filed by Dr. Mitthat and others (CWP No.4324 of 2015) wherein the challenge was to the entire 40% of the 'open category' seats out of the State quota seats being reserved for Punjab Resident Status/domicile was allowed. The petition filed by Varun Khullar and others (CWP No.4761 of 2015) wherein challenge was to the reservations being given to the extent of one half (50%) out of the 40% 'open category' out of 50% State quota towards 'institutional preference' for those students who had passed their qualifying examination from the Baba Farid University, was dismissed.

The writ petition of Dr. Bal Jaskaran Singh (CWP No.4036 of 2016) was allowed in view of the judgment in Dr. Mitthat's case (supra) wherein the challenge was to the notification dated 30.12.2015 incorporated in Part-B of the Prospectus dated 05.01.2016 issued by the Baba Farid University whereby 40% of 'open category' seats out of the 50% State quota seats had been

reserved for students having Punjab Resident Status/domicile. The order passed in Dr. Bal Jaskaran Singh's case has not been assailed by the parties. However, Dr. Arunesh Gupta, as already noticed, has filed a letters patent appeal aggrieved against the said decision in the case of Dr. Bal Jaskaran Singh (supra).

The State of Punjab is aggrieved against the decision in Dr. Mitthat's case (supra) and seeks to justify its action of reserving 40% of the 'open category' seats of the State quota on the basis of Punjab Resident Status/domicile. The appeal insofar as the quota to the extent of 60% out of the State quota for in-service candidates is concerned, is not pressed for in view of the recommendations of the Highly Qualified Committee.

The appellants - Varun Khullar and others are aggrieved against the action of the State Government inasmuch as 'institutional preference' as a reservation had been incorporated after the examination process had been initiated. It is submitted that the learned Single Judge erred in permitting reservation based on 'institutional preference' despite the decision to introduce such a reservation was taken after the examination process had already taken place and the result had also been declared.

The appellant - Arunesh Gupta has impugned the judgment dated 31.03.2016 of the learned Single Judge whereby the writ petition of Dr. Bal Jaskaran Singh etc. has been allowed and impugned clause in para 20 (I) of the notification dated 30.12.2015 incorporated as Part-B in the Prospectus of the Baba Farid University has been held to be illegal and reservation of 40% seats in 'open category' for Punjab residents has been set aside.

Shri Kamal Sehgal, learned Additional Advocate General, Punjab, has submitted that insofar as the State quota, which is 50% of the seats for PG Medical/Dental Courses, the State can legitimately impose conditions of residential status for filling the State quota seats. It is submitted that the learned Single Judge failed to appreciate this aspect of the case. The second contention as regards reservation of 60% quota for in-service PCMS doctors is concerned, the same in view of the recommendations of the Highly qualified Committee is not pressed for. He, however, submits that out of the 60% quota for in-service PCMS doctors, the distribution of seats that remain unfilled particularly where members of the Scheduled Castes and Scheduled Tribes etc. were not available, the question that would require consideration is; whether these were to be filled from amongst the 60% in-service PCMS doctors other than the reserved category or were to be transferred to the reserved category out of the 40% 'open category'. According to learned State counsel, these were to be transferred to the reserved category out of the 40% 'open category' and the learned Single Judge erred in this regard. Therefore, according to the learned State counsel, it is liable to be considered, whether the reserved seats remaining unfilled in the 60% quota for in-service PCMS doctors out of the State quota are to be given to the in-service PCMS doctors or are to be transferred to the reserved category candidates in the 'open category' of 40% of the State quota.

Shri D.S. Patwalia, Senior Advocate with Shri Sehaj Bir Singh, Advocate, for the appellants in Varun Khullar's case (supra)

submitted that 'institutional preference' given by the State

Government and Baba Farid University to half of 40% 'open category' seats of the State quota was brought in public domain for the first time in pursuance of the impugned notification and earlier at no point of time was it informed that such an 'institutional preference' would be accorded and thereby materially change the rule of the game midway after the process for admissions to PG Medical/Dental Courses had already been initiated. It is submitted that the 'institutional preference' by virtue of notification dated 25.02.2015 was restricted to government colleges in the State of Punjab, however, by subsequent notification dated 25.03.2015, it was further extended to private medical colleges in the State. Therefore, it is submitted that the learned Single Judge erred in holding the reservation on the basis of 'institutional preference' to be valid.

Shri Patwalia, Senior Advocate on behalf of Arunesh Gupta (appellant) has submitted that the learned Single Judge erred in allowing the writ petition filed by Dr. Bal Jaskaran Singh and others and as a consequence erred in quashing clause/para 20 (I) of the Notification dated 30.12.2015 and incorporation of the said notification in Part - B of the prospectus for admissions to MDS/BDS courses. It is submitted that reservation on the basis of residence for admissions to PG Medical/Dental Courses is permissible.

Shri Gurminder Singh, Sr. Advocate with Mr. R.P.S. Bara, Advocate appearing for respondents in the LPA filed by the State of Punjab in Dr. Mitthat's case (supra) and in other connected cases has submitted that the learned Single Judge has rightly set aside the reservations on the basis of residence in the PG Medical/Dental

Courses. It is submitted that the same were contrary to law inasmuch as Hon'ble the Supreme Court has held that it would be eminently desirable not to provide for any reservation based on residence requirement within the State.

We have given our thought considerations to the contentions of the learned counsel for the parties and with their assistance have gone through the records of the cases.

The Government of Punjab, Department of Medical Education and Research (Health III Branch) issued a Notification dated 25.02.2015 regarding admissions to PG Degree Courses in Health Sciences Educational Institutions (Medical/Dental) and six months training in Ultrasonography in the State of Punjab. The Baba Farid University was authorized to conduct central counselling for admissions on the basis of All India Post Graduate Medical/Dental Entrance Examination, 2015 (AIPGMEE/AIPGDEE-2015 - for short) to be conducted by the National Board of Examination, New Delhi and All India Institute of Medical Sciences, New Delhi for 50% State quota seats as per procedure laid down by the Medical Council of India/Dental Council of India ('MCI/DCI' - for short) and notified under the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006 ('2006 Act' - for short). The AIPGMEE/AIPGDEE-2015, was stated to be the eligibility-cum-ranking examination which was to be a single entrance examination to various MD/MS/PG Diploma/MDS Courses and six months training in Ultrasonography with the approval of the Ministry of Health and Family Welfare, Government of India. The AIPGMEE/

AIPGDEE-2015, was to be conducted by the National Board of Examination and All India Institute of Medical Sciences, New Delhi for Medical/Dental Courses and for six months training in Ultrasonography. In order to be eligible for admission to a PG Degree Course, it was necessary for a candidate to obtain 50% marks in AIPGMEE/AIPGDEE-2015. However, in respect of candidates belonging to scheduled castes, scheduled tribes and other backward classes, the minimum marks were to be at 40% or as notified by the MCI/DCI.

The distribution of seats in the Government Medical/Dental Colleges, Amritsar and Patiala and Guru Gobind Singh Medical/Dental College, Faridkot was provided for in Clause 27 of the notification dated 25.02.2015, which is as follows:-

"27. Seat distribution in Govt. Institutions (Govt. Medical/Dental College, Amritsar & Patiala, GGS Medical/Dental College, Faridkot)

I. In the Govt. Institutions, 50% of the total seats shall be filled by the Government of India at all India level through All India Test- 2015. The remaining seats shall be filled through AIPGMEE/AIPGDEE-2015 at the State level from amongst the candidates having Punjab Resident status. Out of State quota seats 60% seats shall be filled up from amongst the eligible PCMS (Medical/Dental) in service doctors & 40% seats shall be open to all eligible Medical/Dental graduates. Out of these 40% seats the Governor

of Punjab is further pleased to reserve, by way of institutional preference up to 50% available seats who have passed their qualifying examination from Baba Farid University of Health Sciences, Faridkot except Christian Medical College, Ludhiana. There shall be separate merit list for in-service 60% quota candidates for Medical/ Dental Colleges and a separate merit list for those who are not covered under the category of in-service candidates."

II xxx

III For 40% quota candidates

40% quota seats shall be open to all eligible medical/dental graduates. Any candidate in State Government employment shall produce a No Objection Certificate from his/her employer.

IV. For 40% & All India quota candidates

Candidates selected in All India quota will be considered at par with 40% State quota candidates. They will get fixed emoluments/ stipends as determined by the Government from time to time for the course period of three years subject to the following conditions:-

i to iii xxxx

V. Reservation in Government Colleges

- | | |
|--------------------|-----|
| i. Scheduled caste | 25% |
| ii. Backward Class | 5% |

iii Physically handicapped 3%

xxxx

iv Sports persons 2%

xxxx

v. Children/Grandchildren of terrorism 1% and
riot affected person-1% (in order of preference to
the exclusion of the next category).

xxxx

vi Wards of Defence personnel (in order of
preference to the exclusion of next category) 2%

xxxx

viii Children/Grandchildren of freedom fighters of
Punjab 1%

Note 1 The availability of the seats for reservation
shall be as per hundred point roster being
maintained category wise/subject wise/institution
wise.

Note 2 All the certificates shall be as per latest
instructions issued by the Government of Punjab.

To similar effect is clause 20 (I) of the notification dated
30.12.2015 which was subject matter of consideration in the case of
Dr. Bal Jaskaran Singh (supra), which reads as under:-

"20. Distribution of Seats in Govt. Institutions
(Govt. Medical/Dental College, Amritsar & Patiala,
GGs Medical College, Faridkot)

I. In the Govt. Institutions, 50% of the
total seats shall be filled by the Government of

India at all India level through All India Test-2016. The remaining seats shall be filled through PGET-2016 at the State level from amongst the candidates having Punjab Resident Status. Out of State quota seats 60% seats shall be filled up from amongst the eligible PCMS (Medical/Dental) in service doctors & 40% seats shall be open to all eligible Medical/Dental graduates. Out of these 40% seats the Governor of Punjab is further pleased to reserve by way of institutional preference upto 50% available seats for general category candidates who have passed their qualifying examination from Baba Farid University of Health Sciences, Faridkot/Guru Nanak Dev University, Amritsar, Punjabi University Patiala, except Christian Medical/Dental College, Ludhiana. There shall be separate merit list for in-service 60% quota candidates for Medical/Dental Colleges and a separate merit list for those who are not covered under the category of in-service candidates. In 40% quota, after exhausting all Punjab resident candidates, seats remaining vacant shall be offered to the other State residents."

The position regarding distribution of seats for the PG Courses in Medical and Dental Colleges in the State in terms of the notifications dated 25.02.2015 and 30.12.2015, was that 50% seats

were for the All India quota. These were to be filled by the Government of India by way of an all India level test. The remaining 50% were State quota seats and were to be filled through AIPGMEE/AIPGDEE Test at the State level from amongst the candidates having 'Punjab Resident' status. Besides, out of the Punjab State quota, 60% seats were to be filled from amongst the eligible in-service PCMS doctors (Medical/Dental) and 40% were for the open to all eligible Medical/Dental Graduates. From the 40% 'open category' seats, 20% seats were reserved as 'institutional preference' for those who had done their qualifying examination from Baba Farid University except Christian Medical College, Ludhiana. The earmarking of seats out of the total seats for various categories may be noticed as follows:

Out of 100 seats	50% seats for All India, and 50% State quota seats for 'Punjab Resident Status'
Out of 50% State quota for 'Punjab Resident Status'	60% seats for PCMS doctors and 40% seats for Open Category
Out of 40% of 50% State quota for Open Category	20% seats for Institutional Preference and 20% seats Open for all.

The grievance of some of the petitioners before the learned Single Judge was that reservations to the extent of 40% 'open category' seats out of the State quota on the basis of Punjab Resident Status/domicile was improper; besides, some petitioners alleged that there could not be any 'institutional preference' for those candidates who had passed their qualifying examination from Baba Farid University to the extent of one-half (50%) out of the

40% 'open category' seats of the State quota. The learned Single Judge in Dr. Mitthat's case (supra) and other connected cases formulated the following questions for consideration:-

- “1. Whether there can be reservation for admission in the postgraduate medical course to the State quota seats on the basis of “residence” or “institutional preference”?
2. Whether reservation of 60% in the postgraduate medical course to the State quota seats for in-service PCMS doctors is excessive?”

The learned Single Judge in pursuance of his impugned judgment dated 13.04.2015 held that the reservation on the basis of residence in the PG Medical Courses, provided in the notification dated 25.02.2015 and the Prospectus issued by the University, was illegal. As regards the 'institutional preference', it was held that reservation on the basis of 'institutional preference' provided in the notifications dated 25.02.2015 and 25.03.2015 and in the Prospectus issued by the Baba Farid University, was legal and justified. These were accordingly to continue.

Therefore, the first question formulated by the learned Single Judge was answered that there could be no reservation for admission to the PG Medical Courses to the State quota seats on the basis of residence; however, reservation on the basis of 'institutional preference' were legal and justified, besides, these were to continue.

As regards the second question regarding the 60% reservation out of the 50% State quota for in-service PCMS doctors,

it was contended on behalf of the petitioners in Dr. Mitthat's case (supra) that in-service PCMS doctors compete in small numbers and reservation for them was unfair and unreasonable. A chart of the seats having been filled from amongst the in-service PCMS doctors was submitted; besides, reliance was placed on the case, State of T.N. v. T. Dhilipkumar, (2001) 8 SCC 700. Hon'ble the Supreme Court in the said case *inter alia* observed that it trusts that the appellants in the said case would appoint a Highly Qualified Committee to determine from year to year what, in fact, was the percentage-wise reservation requisite for in-service candidates having regard to the then prevailing situation and the percentage of 50% shall, if found appropriate (sic. inappropriate), be reduced accordingly. It was also contended that since the State of Punjab had failed to constitute any Committee and collect data on the basis of each year admission, therefore, reservation of 60% for the in-service PCMS doctors, was illegal.

The learned Single Judge found force in the arguments raised by learned counsel for the petitioners in Dr. Mitthat's case (supra) because when the matter pertained to admissions in the PG Courses in which 90 seats had been reserved for in-service PCMS doctors and the data from 2010 to 2014 showed that even half of the seats had not been filled up, the State Government, it was observed, should have considered this matter objectively and constituted a Committee to consider the reservation which may not necessarily be 50% as in other States there was no reservation of more than 50% for in-service PCMS doctors. Instances of other States were referred to inasmuch as reservation in UP was 30%, in

Maharashtra 25%, Kerala 40%, Telangana 30%, West Bengal 40%, Odisha 50%, Rajasthan 50%, Gujarat 25%, Uttarakhand 50% and Haryana 50%. Following the judgment in State of T.N. v. T. Dhilipkumar (supra) and the averments made in the petition filed by Dr. Mitthat, the second question was decided in favour of the petitioners in Dr. Mitthat's case, which was to the effect that the State should immediately constitute a Highly Qualified Committee to determine forthwith the percentage of reservation required for in-service PCMS doctors keeping in view the prevailing situations based upon the available data.

In view of the said position, the petition filed by Dr. Mitthat and others (CWP No.4324 of 2015) wherein the challenge was to the entire 40% of the 'open category' seats of the State quota seats being reserved for Punjab Resident Status/domicile was allowed. The petition filed by Varun Khullar and others (CWP No.4761 of 2015) wherein challenge was to the reservations being given to the extent of one half (50%) out of the 40% 'open category' out of 50% State quota towards 'institutional preference' for those students who had passed their qualifying examination from the Baba Farid University, was dismissed. The challenge to the reservation to the extent of 60% in PG Degree Course out of the State quota seats for in-service PCMS doctors was referred to a Highly Qualified Committee.

During the pendency of the appeals, this Court insofar as 60% reservations for in-service PCMS doctors were concerned after hearing learned counsel for the parties vide order dated 14.05.2015 permitted the State of Punjab and Baba Farid University of Health

Sciences, Faridkot to make admissions for the PG Medical/Dental Courses against the 60% in-service PCMS quota out of State quota, as per Prospectus without waiting for the report of the Committee, which had been constituted on the basis of the impugned judgment. However, it was left open for the PCMS doctors or their Association to represent their case before the said Committee. Besides, except the aforesaid modification, the admissions were ordered to be made in the counselling that was scheduled, which would be subject to the decision of the letters patent appeals.

Thereafter, in terms of order dated 16.11.2015, it was observed that the report/recommendations of the Highly Qualified Committee constituted by the State Government, Department of Medical Education and Research, for determining the percentage of in-service PCMS doctors had since been received and taken on record vide order dated 24.08.2015. The Committee had recommended the continuation of 60% quota for the in-service PCMS doctors out of the State quota. It was further observed that the learned counsel for the appellant (s) and learned counsel for the State as also counsel for the respondents did not dispute the said position and in the circumstances for the present, there was no dispute with regard to reservation of 60% quota for in-service PCMS doctors.

The contention of Shri Kamal Sehgal, learned Additional Advocate General, Punjab, as noticed above, relates to the question of transfer of the unfilled seats of 60% quota for in-service PCMS doctors from the State quota. This aspect was, in fact, considered in the case of Dr. Gagandeep Shergill and others v. State of Punjab

and others (CWP No.5423 of 2015), which was also disposed of in terms of the same order dated 13.04.2015 passed in Dr. Mitthat's case (supra).

The petitioners Dr. Gagandeep Shergill and others were in-service PCMS doctors serving in the State of Punjab and had completed 4/6 years of rural service. They became eligible for admissions to PG Medical/Dental Courses against the 60% quota seats for in-service PCMS doctors from the State quota. Their grievance was that in terms of clause 29 of the notification dated 25.02.2015 after exhausting all the reserve category candidates in 60% quota for in-service PCMS doctors, the vacant seats would directly be transferred to the same category under the 40% State quota for fresh graduates without these being first given to the general category of the 60% in-service PCMS doctors. Accordingly, they prayed for quashing clause 29 of the notification dated 25.02.2015 incorporated in Part-B of the Prospectus issued by the Baba Farid University. Said clause 29 reads as under:-

"29. Conversion of seats under All India quota/60%/40% Quota unfilled seats:

All India Quota - The vacant seats transferred from All India quota, will be transferred to the same category of candidates of 40% State quota.

After exhausting all the eligible reserve category candidates in 60% quota, the vacant seats shall be transferred to the same category candidates of 40% quota and after exhausting all

reserve category candidates in 40% quota seats will be transferred to General Category candidates of 40% quota.

In case of non-availability of general category candidates in 60% quota the vacant seat (s) shall be offered to the eligible general category candidates in 40% quota.”

The learned Single Judge held the said provision to be apparently unreasonable and arbitrary because of the fact that 60% in-service quota was a source of admission and not reservation. Relying on the Supreme Court judgments in K. Suraisamy v. State of T.N., 2001 (1) S.C.T. 773, State of M.P. v. Gopal D. Tirthani, 2003 (3) S.C.T. 996 and a judgment of this Court in Baba Farid University of Health Sciences v. Dr. Heena Bharti, LPA No.1368 of 2013, decided on 14.08.2013, struck down clause 29 of the Prospectus, being illegal. It was held that after exhausting eligible reserve category candidates in 60% in-service quota, any vacant seat in the reserve category would be transferred to general category of 60% in-service quota and if it was not consumed even in the general category of 60% in-service quota, then it would go to the reserve category of 40% non-service quota and if it was not consumed there also, then it would go to the general category of 40% non-service quota. The writ petition of Dr. Gagandeep Shergill and others (supra) was accordingly allowed.

The State of Punjab has not filed any appeal against the judgment in Dr. Gagandeep Shergill's case (supra) and the only appeal filed by it is in Dr. Mitthat's case (supra). Besides, Shri

Kamal Sehgal, learned Additional Advocate General, Punjab, is appearing for the appellants in LPA No.671 of 2015; respondent No.1 in LPA No. 595 of 2015 and for respondents No.1 and 2 in LPA No.521 of 2016, which are under consideration. There is no challenge in the appeal filed by the State regarding the findings of the learned Single Judge to the effect that after exhausting eligible reserve category candidates in 60% in-service quota, any vacant seat in the reserve category would be transferred to the general category of 60% in-service quota and if it was not consumed even in the general category of 60% in-service quota, then it would go to the reserve category of 40% non-service quota and if it was not consumed there also, then it would go to the general category of the 40% non-service quota.

As already noticed, this Court during the pendency of the petition permitted the State of Punjab and Baba Farid University to make admissions against the 60% in-service PCMS doctors quota out of the State quota as per Prospectus. Thereafter, learned counsel for the appellants and learned counsel for the State as also learned counsel for the respondents on 16.11.2015 submitted that there was no dispute with regard to reservation of 60% quota for in-service PCMS doctors. Admissions have also been made against the said quota on the basis of interim order.

Therefore, the questions that require consideration are whether the 40% State quota in the State can be restricted to those who are Punjab residents/domicile and whether there can be reservation for admissions to PG Medical/Dental courses on the basis of 'institutional preference'.

According to learned State counsel, the 50% State quota seats for admissions to PG Medical/Dental courses are to be filled from amongst the residents of Punjab State only.

The issue regarding reservation of seats in PG Courses in government run medical colleges has been considered by a Constitutional Bench of Hon'ble the Supreme Court in Saurabh Chaudri and others v. Union of India and others, (2003) 11 SCC 146. The core question involved in the said case centred round the constitutional validity of reservation whether based on 'domicile' or 'institution' in the matter of admissions to PG Courses in government run medical colleges. The first question that was considered was whether reservation on the basis of domicile was impermissible in terms of clause (1) of Article 15 of the Constitution of India. The term 'place of birth', it was said, occurred in clause (1) of Article 15 but not 'domicile'. If a comparison was made between Articles 15 (1) and 15 (2) of the Constitution, it would appear that the former referred to 'place of birth' alone while the latter referred to both 'domicile' and 'residence' apart from the 'place of birth'. A distinction, therefore, had been made by the makers of the Constitution themselves to the effect that the expression 'place of birth' was not synonymous to the expression 'domicile' and these reflected two different concepts. Though in both the expressions appeared to be synonymous to some of the members of the Constituent Assembly but the same could not be a guiding factor. In D.P. Joshi v. State of Madhya Bharat and another, AIR 1955 SC 334, a Constitution Bench had held so in no uncertain terms and it was bound by the said decision.

Reliance was placed in Saurabh Chaudri's case (supra) on the Supreme Court decision in D.P. Joshi's case (supra) wherein it was said that 'residence' and 'place of birth' were two distinct concepts with different connotations both in law and in fact, and when Article 15 (1) prohibited discrimination based on the 'place of birth', it could not be read as prohibiting discrimination based on 'residence'. It could not be held that the exemption based on 'domicile' was, in effect, an exemption based on 'place of birth' under an alias. 'Domicile' of a person meant his permanent home. Whether the expression used was 'domicile of origin' or 'domicile of birth'. The concept involved in it was something different from what the words 'place of birth' signified. If 'domicile of birth' and 'place of birth' could not be taken as synonymous, then the prohibition enacted in Article 15 (1) against discrimination based on 'place of birth' could not apply to discrimination based on 'domicile'.

The judgment of Hon'ble the Supreme Court in State of Uttar Pradesh v. Pradip Tandon, AIR 1975 SC 563, was also referred to in Saurabh Chaudri (supra) wherein it was *inter alia* said that no reservation could be made on the basis of 'place of birth', as this would offend Article 15 of the Constitution.

Consequently, answer to the first question whether reservation on the basis of 'domicile' was impermissible, it was held must, therefore, be rendered in the negative.

The second question that had arisen for consideration in Saurabh Chaudri's case (supra) was whether reservation by way of 'institutional preference' came within suspected classification warranting strict scrutiny test. Clause (1) of Article 15 of the

Constitution, it was observed, was not attracted. The only question which survived was whether the same attracted the wrath of Article 14 of the Constitution. Article 14, it was observed, forbade class legislation but permitted reasonable classification subject to the conditions that it was based on intelligible differentia and that the differentia must have a rational relation to the object sought to be achieved. Reliance was placed on Ram Krishna Dalmia v. S.R. Tendolkar, AIR 1958 S.C. 538 in this regard. It was held that the strict scrutiny test or the intermediate scrutiny test applicable in the United States of America could not be applied in the said case. Such a test was not applied in Indian Courts. In any event, such a test may be applied in a case where a legislation *ex facie* was found to be unreasonable. Such a test may also be applied in a case where by reason of a statute the life and liberty of a citizen was put in jeopardy. The Supreme Court since its inception apart from a few cases where the legislation was found to be *ex facie* wholly unreasonable proceeded on the doctrine that constitutionality of a statute was to be presumed and the burden to prove contra was on him who asserted the same. The Courts always leaned against a construction which reduced the statute to a futility. Applying the test of presumption of constitutionality, it was held that no case had been made out for invoking the doctrine of strict construction or intermediate construction.

The next question considered was whether reservation by 'institutional preference' was valid and whether it was *ultra vires* of the Constitution. It was held not to be so. Article 14, it was repeated, forbade class legislation, but not reasonable classification

which meant that the classification must be based on reasonable and intelligible differentia and such differentia must be on rational basis. After referring to several decisions, no reason was found to depart from the ratio laid down in Dr. Pradeep Jain v. Union of India, AIR 1984 SC 1420. The logical corollary of the findings therein was that reservation by way of 'institutional preference' did not offend Article 14 of the Constitution. It was, however, further observed that the test to uphold the validity of a statute on equality must be judged on the touch-stone of reasonableness. In Dr. Pradeep Jain's case (supra), it was noticed that reservation to the extent of 50% was held to be reasonable although subsequently in the case of Dr. Dinesh Kumar and others (II) v. Motilal Nehru Medical College, Allahabad and others, (1986) 3 SCC 727, it was reduced to 25% of the total seats. The said percentage of reservation was fixed keeping in view the situation as then existing. The situation, it was observed, had now changed to a great extent as 25 years had passed. The country had during this time produced a large number of post-graduate doctors. Our Constitution, it was said, was organic in nature and being a living organ it was ongoing and with the passage of time, law must change. Horizons of constitutional law were expanding.

Having regard to the facts and circumstances of the case, the Supreme Court was of the opinion that the original scheme as framed in Dr. Pradeep Jain's case (supra) should be reiterated in preference to Dr. Dinesh Kumar's case (supra). Reservation by way of 'institutional preference', therefore, should be confined to 50% of the seats since it was in public interest.

In Dr. Pradeep Jain's case (supra), it was held that the Constitution recognizes only one domicile, namely, domicile in India. Article 5 of the Constitution was clear and explicit on this point and it referred only to one domicile, namely, 'domicile in the territory of India'. The word 'domicile' used in the Rules, applicable in the said case, regulating admissions to medical colleges framed by some of the States was, therefore, to be interpreted in the same loose sense of permanent residence and not in the technical sense in which it was used in private international law. A warning against use of the word 'domicile' with reference to States forming part of the Union of India was issued because it was a word which was likely to conjure up the notion of an independent State and encourage in a subtle and insidious manner the dormant sovereign impulses of different regions. It was thought dangerous to use a legal concept for conveying a sense different from that with which it was ordinarily associated with as a result of legal usage over the years. It was further said that the concept of 'domicile' if used for a purpose other than its legitimate purpose may give rise to lethal radiations which may in the long run tend to break up the unity and integrity of the country. Therefore, it was strongly urged upon State Governments 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.

It is in consequence of the said decision that the State of

Punjab has issued notification dated 06.06.1996 substituting the

word 'residence' for the word 'domicile'. The notification dated 06.06.1996 has been issued on the subject of 'Bona fide resident of Punjab-Guidelines for grant of Residence Certificate'. Attention of the Financial Commissioners, Principal Secretaries/Administrative Secretaries, All Heads of Departments, Commissioners of Divisions, Registrar, Punjab and Haryana High Court, District and Session Judges, Deputy Commissioners and Sub-Divisional Officers (Civil) in the Punjab State were invited to the Punjab Government circular dated 29.01.1996 vide which instructions were issued regarding simplification of procedure for obtaining the certificate of domicile for the purpose of admission to educational institutions (including technical/medical institutions). It was stated that the matter had been reconsidered in the light of the judgment of Hon'ble the Supreme Court in Dr. Pradeep Jain (supra), wherein it was held that instead of the word 'Domicile', the word 'Residence' be used in the instructions issued by the State Government on the subject. Accordingly, it had been decided by the Government to revive the above referred Government instructions as under:

- "a) Citizen of India
- b) Produce an affidavit to the effect that they or their children/wards have not obtained the benefit of Residence in any other State."

In terms of the above notification dated 06.06.1996, the word 'domicile' has been substituted with the word 'residence' and for claiming the benefit of residence, an affidavit is to be produced to the effect that the deponent or their children/wards had not obtained the benefit of 'residence' in any other State.

The question for consideration in Dr. Pradeep Jain's case (supra) was whether, consistently with the Constitutional values admissions to medical college or any other institution of higher learning situated in a State could be confined to those who had their 'domicile' within the State or who were resident within the State for a specified number of years or could any reservation in admissions be made for them so as to give them precedence over those who did not possess 'domicile' or residential qualification within the State, irrespective of merit. It was concluded as follows:

"We are therefore of the view that so far as admissions to post-graduate courses, such as M.S., M.D. and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate

course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seat available for admission to the post-graduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as to the MBBS course. But, even in regard to admissions to the post-graduate course, we would direct that so far as super specialities such as neuro-surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all India basis.” (Emphasis added)

The above observations show that Hon'ble the Supreme Court insofar as admissions to post-graduate courses, such as M.S., M.D. and the like were concerned, eminently desired not to provide for any reservation based on residence requirement within the State or on 'institutional preference'. However, directed that though residence requirement within the State was not to be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats, it was said, be reserved on the basis of 'institutional preference' in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same

medical college or university but such reservation on the basis of 'institutional preference' should not in any event exceed 50 per cent of the total number of open seats available for admissions to the post-graduate course. This outer limit was fixed which was subject to revision on the lower side by the Indian Medical Council in the same manner as to the MBBS course. However, in regard to admissions to the post-graduate course, it was directed that insofar as super specialities such as neuro-surgery and cardiology were concerned, there was to be no reservations at all even on the basis of 'institutional preference' and admissions were to be granted purely on merit on all India basis.

In Nikhil Himthani v. State of Uttarakhand and others, (2013) 10 SCC 237, the petitioner therein was a permanent resident of Delhi. He qualified the All India Pre-Medical Test (PMT) conducted by the Central Board of Secondary Education for 15% seats reserved for All India quota. He was admitted in MBBS Course in the Medical College at Haldwani in the State of Uttarakhand in 2007 and completed his course in March, 2012. After completing internship in March, 2013, he appeared in the NEET Examination, 2013 conducted by MCI for admissions to PG Medical Courses and qualified the examination. It was claimed by him that he secured 60th rank in the State of Uttarakhand. However, he did not fulfil the eligibility criteria. In terms of clause 1 of the eligibility criteria, a candidate was required to have passed MBBS examination from Uttarakhand from any of the colleges named therein and must have been admitted through competitive examination, namely, Uttarakhand State PMT. The petitioner therein was not admitted

through Uttarakhand PMT and did not fulfil the eligibility criteria. Clause 2 of the eligibility criteria provided that candidates who were domiciles of Uttarakhand and had passed MBBS/BDS examination from Medical/Dental Colleges of other States and were admitted through 15% All India Quota were eligible. The petitioner was not a domicile of Uttarakhand and had not passed MBBS examination from a medical college of other State, therefore, he was ineligible for admission to PG Course under clause 2. Clause 3 of the eligibility criteria provided that candidates who were domicile of Uttarakhand and had passed MBBS from medical colleges of other States in India and were admitted through Pre-Medical Test conducted by the concerned State Government were eligible for admission to PG Medical Course. The petitioner was not a domicile of Uttarakhand and had not passed MBBS from a medical college of some other State in India, therefore, he was not eligible for admission to PG Medical/Dental Course under clause 3 of the eligibility criteria. He, therefore, could not continue his PG Medical Course in the State quota in the medical colleges in the State of Uttarakhand even though in the merit list of NEET he claimed to have 60th rank in the State of Uttarakhand. He, therefore, filed a petition seeking quashing of clauses 1, 2 and 3 of the eligibility criteria.

It was contended on behalf of the petitioner therein that in Pradeep Jain's case (supra) it was held that insofar as admissions to PG Courses such as MS, MD and the like were concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State, but having regard to broader considerations of equality of opportunity and institutional

continuity in education which had its own importance and value, a certain percentage of seats may be reserved on the basis of 'institutional preference' in the sense that a student who had passed MBBS course from a medical college or university, may be given preference for admission to the PG course in the same medical college or university. It was vehemently submitted that the directions in Pradeep Jain's case (supra) for giving 'institutional preference' would mean that candidates studying in MBBS course in any institution in the State of Uttarakhand should be given a preference to continue the PG course in the same institution.

On behalf of the respondents, it was submitted that in Saurabh Chaudri's case (supra), it was said that giving 'institutional preference' was a matter of State policy which could be invalidated only in the event of being violative of Article 14 of the Constitution. Therefore, the State of Uttarakhand was entitled to make its own policy with regard to 'institutional preference' in terms of clauses 1, 2 and 3 of the eligibility criteria.

Hon'ble the Supreme Court reiterated the view taken in Dr. Pradeep Jain's case (supra) holding that excellence could not be compromised by any other consideration for the purpose of admission to PG Medical courses such as MD/MS and the like because that would be detrimental to the interests of the nation and, therefore, reservation based on residential requirement in the State would affect the right to equality of opportunity under Article 14 of the Constitution but:

“a certain percentage of seats may in the present
circumstances be reserved on the basis of

institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same medical college or university.”

It was further said that the said view expressed in Dr. Pradeep Jain's case (supra) had been reiterated by another three Judge Bench of the Supreme Court in Magan Mehrotra and others v. Union of India and others, (2003) 11 SCC 186, keeping in mind the law as laid down, the eligibility criteria was considered. It was held as follows:

“On a reading of Clause 5 of the Eligibility Criteria, we find that eligible candidates who get elected (sic. - selected) through NEET PG-2013/NEET (MDS)-2013 will be given admission on available seats in postgraduate courses by the Counselling Board according to their rank in State Merit List. Hence, under Clause 5 of the Eligibility Criteria merit as determined through NEET is the basis for admission to the postgraduate medical courses. But when we look at Clause 1 of the eligibility criteria, we find that the candidates who have passed MBBS examination from different colleges in the State of Uttarakhand are eligible for admission to the medical postgraduate courses in the State quota only if they were admitted through the Uttarakhand State PMT. The

petitioner, who has studied the MBBS course in the Government Medical College in Haldwani, was not admitted to the aforesaid course through the Uttarakhand State PMT examination, but it has been admitted in the additional affidavit filed on behalf of respondent Nos. 1 and 2 on 22.07.2013 that the petitioner had qualified in the pre-medical examination in the year 2007 for admission in the All-India Quota. It so happened that the Medical College at Haldwani was then not a Government College in 2007 and therefore in the Medical College at Haldwani, there was no All-India Quota at that time. The fact however remains that the petitioner had the merit to be admitted in MBBS course in 2007 when he was actually admitted in the Medical College at Haldwani. We are thus of the considered opinion that to exclude the petitioner from consideration on the basis of his merit only on the ground that he was not admitted to the MBBS course through the Uttarakhand PMT would be to deny him equality of opportunity in matter of admission to the postgraduate medical course and to violate his right to equality under Article 14 of the Constitution as explained by this Court in Pradeep Jain v. Union of India and others (supra).

We now come to Clauses 2 and 3 of the Eligibility

Criteria in the Information Bulletin. Under Clauses 2 and 3, a domicile of Uttarakhand who has passed MBBS from a medical college of some other State having been admitted either through the 15% All-India Quota or through the pre-medical test conducted by the State Government concerned has been made eligible for admission to a postgraduate medical course in the State quota. Obviously, a candidate who is not a domicile of Uttarakhand State is not eligible for admission to the postgraduate course under Clauses 2 and 3 of the eligibility criteria. Preference, therefore is given only on the basis of residence or domicile in the State of Uttarakhand under Clauses 2 and 3 of the Eligibility Criteria and such preference on the basis of residence or domicile within a State has been held to be violative of Article 14 of the Constitution in the case of Dr. Pradeep Jain v. Union of India and others (supra) and Magan Mehrotra v. Union of India and others (supra)."

In Vishal Goyal v. State of Karnataka, (2014) 11 SCC 456, the Information Bulletins for admission to PG courses in the State of Karnataka in terms of sub-clause (a) of clause 2.1 envisaged that in order to be eligible to appear for the entrance test for PG medical courses, a candidate was required to be of Karnataka origin. The explanation under sub-clause (a) of clause 2.1 of the Information

Bulletins gave the meaning of, 'A candidate of Karnataka origin'. The meaning contained conditions which debarred the petitioners from appearing in the entrance tests for admissions to the PG medical/dental courses in the State of Karnataka even though they had studied MBBS/BDS in the institutions in the State of Karnataka. The challenge was, therefore, made by the petitioners to sub-clause (a) of clause 2.1 of the Information Bulletins as *ultra vires* Article 14 of the Constitution as interpreted in Pradeep Jain's case (supra). In terms of Pradeep Jain's case (supra), it was contended that it had been held that a certain percentage of seats must be reserved on the basis of institutional preference to enable the students who had passed MBBS or BDS courses from medical or dental colleges in the State of Karnataka to get admissions to PG medical or dental courses in the medical or dental colleges of the State of Karnataka.

The Supreme Court considered the case in the light of the earlier judgments in Saurabh Chaudri's case (supra) and Magan Mehrotra's case (supra) in which it was observed that the view in Pradeep Jain's case (supra) had been approved. It was held that clause 2.1 (a) of the two Information Bulletins did not actually give institutional preference to students who had passed MBBS/BDS from colleges or universities in the State of Karnataka, but makes some of them ineligible to take the entrance test for admission to postgraduate medical or dental courses in the State of Karnataka to which the Information Bulletins applied. Therefore, the writ petition was allowed and clause 2.1 (a) of the Information Bulletins for postgraduate medical and dental courses were declared *ultra vires*

In the circumstances, it may be noticed that the ratio of the judgment in Pradeep Jain's case (supra) regarding the desirability of not to provide for any reservation based on residential requirement or on 'institutional preference', but reserving a certain percentage of seats on the basis of 'institutional preference' which are not in any event to exceed 50% of the total number of seats available for admissions to PG courses, has been followed consistently.

In the circumstances, the learned Single Judge rightly held that in Saurabh Chaudri's case (supra), the question was whether the reservation on the basis of domicile was impermissible in terms of clause (1) of Article 15 of the Constitution of India. It did not specifically deal with the reservation for admission in the postgraduate medical courses on the basis of 'domicile' rather it had approved the decision in the case of Dr. D.P. Joshi v. State of Madhya Bharat (supra). Thus, the references to the judgments in Dr. D.P. Joshi's case (supra) and the judgment in the case, State of U.P. v. Pradip Tandon (supra) in Dr. Saurabh Chaudri's case (supra), it was held by the learned Single Judge, was not the answer to the question as to whether the reservation on the basis of residence/domicile was held to be good. Had it been so, the five Judge Bench in Dr. Saurabh Chaudri's case (supra) would have specifically or impliedly overruled the decision in Dr. Pradeep Jain's case (supra), in which it has been categorically held that the reservation in the postgraduate medical courses on the basis of residence was not permissible. Therefore, it was held that the reservation on basis of residence in the postgraduate medical

courses, provided in the notification dated 25.02.2015 and the prospectus issued by the University, was illegal. As regards the 'institutional preference', again the judgments in Dr. Pradeep Jain's case (supra), Magan Mehrotra's case (supra), Nikhil Himthani's case (supra) and Saurabh Chaudri's case (supra), it was observed by the learned Single Judge, would be a guiding factor for this Court because in the judgment in Saurabh Chaudri's case (supra), it had been held that the criterion for 'institutional preference' had been working satisfactorily in most of the States for the last about two decades and would stay. It was, therefore, held that reservation on the basis of 'institutional preference' provided in the notifications dated 25.02.2015 and 25.03.2015 and in the prospectus issued by the University was legal and justified. It was also held by the learned Single Judge that in view of the judgment in Vishal Goyal's case (supra), the admissions to the seats allotted to the State quota in PG medical courses even in the private colleges on the basis of 'institutional preference' would continue.

As regards the 'institutional preference', it may, however, be noticed that it was stated in Saurabh Chaudri's case (supra), as has already been noticed, that reservation by way of 'institutional preference' is to be confined to 50% of the seats since it was stated to be in public interest.

The position, as has already been noticed above, is that the State quota of 50% is entirely earmarked for the 'Punjab resident status/domicile'. Out of this State quota, 60% is for in-service PCMS doctors and the remaining 40% is 'open category'.

Out of this 40% 'open category' State quota; 20% is for

'institutional preference' and 20% is 'open for all' but nevertheless it continues to be for 'Punjab resident status/domicile' as the entire State quota is for the said 'Punjab resident status/domicile'. The contention of Shri Kamal Sehgal, learned Additional Advocate General, Punjab, that insofar as the State quota, which is 50% of the seats for PG Medical/Dental Courses, the State can legitimately impose conditions of residential status for filling the State quota seats, in view of the ratio of the judgment in Pradeep Jain's case (supra) to the effect that it would be eminently desirably not to provide for any reservation based on residence requirement within the State, is devoid of any merit.

Therefore, for the 20% 'open category', i.e. other than 20% 'institutional preference' category out of the 40% 'open category' of the State quota would have to be invalidated in view of the observations of the Supreme Court in Saurabh Chaudri's case (supra). As such, reservation in medical colleges affiliated with Baba Farid University on the basis of 'residence' to the extent of 20% other than 'institutional preference' out of 40% 'open category' from the State quota are liable to be quashed. The second question about 60% reservation for in-service PCMS doctors, as already noticed, is not to be gone into.

In the circumstances, the appeals are dismissed. However, the reservations in medical colleges affiliated with Baba Farid University on the basis of 'residence' to the extent of 20% other than the 'institutional preference' out of 40% 'open category' from the 50% State quota are quashed. This would not in any manner, mean to enhance the 20% 'institutional preference' quota of the

40% 'open category' quota from 50% State quota. It is left open to the State to devise means to fill in the seats from amongst the eligible candidates.

(S.S. SARON)
JUDGE

07.04.2016
A. Kaundal/Ramesh

(GURMIT RAM)
JUDGE