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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3506/2016 & CM APPLs. 15001-15002/2016

ANKITA CHOUDHARY

Through

..... Petitioner

Mr. Tanmaya Mehta, with
Mr. Shubhanshu Singh and
Mr. Suman Kumar, Advocates

versus

GURU GOBIND SINGH

INDRAPRASTHA UNIVERSITY

Through

..... Respondent

Ms. Anita Sahani, Advocate.

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Date of Decision : 17th May, 2016**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****J U D G M E N T****MANMOHAN, J. : (Oral)**

1. Present writ petition has been filed challenging the Notification dated 07th April, 2016 issued by respondent-Guru Govind Singh Indraprastha University stating that the only such candidates will be eligible in reserved Other Backward Classes [for short "OBC"] whose caste is stated as OBC in the list notified by the Central Government or GNCT of Delhi. Petitioner further seeks a direction to respondent-University to grant her the benefit of reservation as an OBC candidate.

2. The petitioner is a 'Jat' who has a caste certificate issued by the State of Uttar Pradesh. It is pertinent to mention that Jats are OBCs even in Delhi.

3. The petitioner completed her MBBS under reserved OBC category from Vardhman Mahavir Medical College and Safdarjung Hospital affiliated to the respondent and had participated in the Post Graduate Medical Courses (for short "PGMC") admissions for academic session 2016-17.

4. The prospectus for academic session 2016-17 like 2015-2016 session stated that the reservation policy of respondent-University "*as applicable from time to time*" would be applicable. Respondent University in its counter affidavit filed in **W.P.(C) 6329/2015, Sandeep Kumar vs. Guru Gobind Singh Indraprastha University and Ors.** with regard to challenge to OBC admission in 2015-16 batch had stated that according to its reservation policy, persons having a caste certification from outside Delhi were also considered as OBCs in the reserved category. In the judgment dated 29th July, 2015 in **Sandeep Kumar** (supra), this Court in para 3(vii) had recorded respondent University's stand as follows:

"3. The respondent No.1 Guru Gobind Singh Indraprastha University (GGSIPU) in its counter affidavit, with respect to the aforesaid controversy stated:

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vii) Since the institutional quota is reserved for MBBS graduates of respondent No.1 GGSIPU and the admission is done in Central Government administered institutions, all candidates who hold a valid OBC certificate from the place of their residence in any State in the country and have done MBBS from respondent No.1 GGSIPU are eligible for applying in the OBC quota."

5. In respondent-University's written exam, the petitioner secured 103rd Rank in the overall merit list. Just two days before the first counselling was scheduled to begin i.e. on 07th April, 2016, the respondent after having a re-look at its reservation policy in accordance with the judgment of this Court in **Sandeep Kumar** (supra), issued the impugned Notification stating that

only those students who had been issued a caste certificate by the Government of Delhi, were eligible to apply under the OBC category.

6. Mr. Tanmaya Mehta, learned counsel for petitioner states that the application of impugned Notification dated 07th April, 2016 issued just two days prior to the scheduled date of counselling to the academic session 2016-17, is impermissible as it adversely affects the valuable right of the petitioner to be considered as an OBC candidate and which right was available to her at the time of publication of prospectus (January 2016), at the time of written exam (12th March, 2016) and at the time of declaration/publishing of results of the written exam (14th March, 2016), but was taken away just two days prior to scheduled date of counselling.

7. Learned counsel for petitioner submits that by virtue of the impugned Notification, the rules of the game have been changed after the game had begun. In support of his submission, he relies upon the following judgments:-

A. ***M. Kingston Vijay Asir vs. Medical Council of India & Ors., W.P.(c) 9841/2015 (High Court of Madras)*** wherein it has been held as under:-

“7. Admittedly, at the time of first phase of counseling, the condition imposed was that "option once exercised during the counseling cannot be changed later" and the petitioner has exercised his option to join M.D. (Radio Diagnosis), however, on account of alternations/amendments made during second and third phase of counseling to the effect namely, "allotment and re- allotment will be conducted and candidates can opt for change of course and change of college", candidates who have already exercised their option to other subjects in the Post Graduate courses, started exercising their option and the result being, once again recounseling has to be done in respect of the seat vacated by students who have joined in other Post Graduate courses. In the considered opinion of the Court, amendment/alteration of the conditions during second and third

phase of counseling is unsustainable in the light of the pronouncements made by the Hon'ble Supreme Court of India in the above cited decisions.

8. In Parmender Kumar and Others v. State of Haryana and Others [MANU/SC/1336/2011: (2012) 1 SCC 177], the facts of the case would disclose that the case pertains to members of the Haryana Civil Medical Services (HCMS), to be admitted to the postgraduate courses conducted by Pandit B.D. Sharma University of Health Science, Rohtak and what is of importance is the method of selection and admission which was made a part of the prospectus, wherein, in Clause No. 6 of the prospectus it has been indicated as follows:

"6.(iii) The conditions for NOCs fixed by the Government of Haryana vide Letter No. 2/123/05/I-HB-I dated 5.12.2008 for HCMS doctors who want to join PG courses are given at Annexure D. (However, latest government instructions issued from time to time will be followed.).

Further Clause No. 3 stipulates that the basic condition for eligibility is three years regular service with successful completion of probation period out of which two years service is essential in rural areas for both reserved and open seats in the case of HCMS doctors and however, the condition of rural service will not be applicable in the case of a member of the HCMS. The appellant before the Hon'ble Supreme Court were allowed to participate in the selection process on the basis of merit list published on 03.03.2011, however on 31.03.2011, the Government of Haryana issued an instruction, which was circulated on its website on 05.04.2011, which changed the eligibility condition, that too one day before the date of counseling on 06.04.2011 and challenging the same, writ petitions were filed before the High Court of Punjab and Haryana and an interim order was passed permitting the appellants to take part in the counseling, however the results of the appellants should be kept in a sealed cover and would be subject to

the outcome of the writ petition. Aggrieved by the interim order passed, Letters Patent appeals were filed before the Hon'ble Division Bench, which uphold the order passed by the learned Single Judge and it was put to challenge before the Hon'ble Supreme Court in the above cited judgment. The Hon'ble Supreme Court, taking into consideration of its earlier decisions, observed as follows:

"26. From the facts as disclosed, the only question which emerges for decision in these appeals is whether the State Government had any jurisdiction and/or authority to alter the conditions relating to admission in the postgraduate or diploma courses in the different disciplines in medicine which had earlier been indicated in the Prospectus, once the examination for such admission had been conducted and the results had been declared and a select list had also been prepared on the basis thereof. In other words, once the process of selection had started on the basis of the terms and conditions included in the Prospectus, was it within the competence of the State Government to effect changes in the criterion relating to eligibility for admission, when not only had the process in terms of the Prospectus been started, but also when counseling was to be held on the very next day, which had the effect of eliminating many of the candidates from getting an opportunity of pursuing the postgraduate or diploma courses in the reserved HCMS category.

27. Although Mr. Patwalia had placed a good deal of reliance on the decision of this Court in Rajiv Kapoor case [MANU/SC/0214/2000: (2000) 9 SCC 115] wherein the facts were almost similar to the facts of this case, there is a singular distinction between the two. It has, no doubt, been held by this Court in Rajiv Kapoor case that the High Court fell into serious error in sustaining the claim of the petitioners before the High Court that selection and admissions for the course in question had to be only in terms of the stipulations contained in Chapter V of the prospectus issued by the University. It

was further held that (SCC p. 120, para 9) such an error had been committed by

"assuming that the Government had no authority to issue any directions laying down any criteria other than the one contained in the prospectus and that the marks obtained in the written entrance examination alone constituted proper assessment of the merit performance of the candidates applying for selection and admission".

This Court also observed that the High Court in allowing the writ petitions had purported to follow an earlier judgment of the Full Bench of the same High Court in Amardeep Singh Sahota v. State of Punjab [MANU/PH/0491/1993: (1993) 4 SLR 673 (P&H)], which, in fact, did not doubt the competency or authority of the Government to stipulate procedure for admission relating to courses in professional colleges, particularly, in respect of reserved category of seats. This Court also observed that (Rajiv Kapoor case, SCC p. 120, para 10) ultimately the Full Bench had directed in the case decided by it

"that selections for admission [should] be finalised in the light of the criteria specified in the government orders already in force and the prospectus, after ignoring the offending notification introducing a change at a later stage".

29. As has also been pointed out hereinbefore, this Court in Rajiv Kapoor case took notice of the fact that the Full Bench, on whose decision the High Court had relied, ultimately directed that the selections for admission should be finalised in the light of the criteria specified in the government orders already in force and the prospectus, "after ignoring the offending notification introducing a change at a later stage". (emphasis supplied) In fact, this is what has been contended on behalf of the appellants that once the process of selection of candidates for admission to the postgraduate and diploma courses had been commenced on the basis of the prospectus, no change could, thereafter, be effected by

government orders to alter the provisions contained in the prospectus. If such government orders were already in force when the prospectus was published, they would certainly have a bearing on the admission process, but once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counseling was to begin, so as to deny the candidates, who had already been selected, an opportunity of admission in the aforesaid courses."

The appeals were allowed and since some time had passed, the Court directed the appellants to be admitted to Post Graduate degree or diploma course for which they have been selected for the new academic year without any further test or selection."

- B. *Sri Guru Ram Das Charitable Hospital Trust & Ors. vs. State of Punjab & Anr., (2004) ILR 1, Punjab and Haryana 152*** wherein it has held as under:-

"40. The NRI seats have been consistently available since 1993. The NRI students have been consistently told that separate quota for such students exists in the Colleges in the State of Punjab. In fact such reservation exists in Colleges throughout India. For this year also, the candidates have travelled from abroad, from countries as far as U.S.A. They had also made payments in foreign exchange as required under the Prospectus. They had obtained the necessary eligibility certificates from the Baba Farid University, Faridkot. Their counseling took place on 27.07.2003. We are of the considered opinion that in these circumstances it was impermissible for the respondents to modify the original notification dated 14.05.2003, by deleting the NRI quota. Learned counsel for the petitioner have rightly argued that the admissions for the academic Sessions 2003-2004 have to be governed by the notification dated 14.05.2003. The Common Entrance Test has been held on the basis of the Prospectus issued by the Baba Farid University, on the basis of the notification dated 14.05.2003. After the test had been held and the result had been

declared and the petitioners had been given the eligibility certificate by the Baba Farid University, it was too late in the day for the respondents to effect a change in the notification date 14.05.2003, which is the basis of the Prospectus issued by the Baba Farid University, Faridkot, which was made available to the students with effect from 26.05.2003.

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42. We are unable to accept the submission made by the learned counsel. The law has been settled by a string of authorities that the Prospectus is law for the academic Session to which it relates.

43. In the case of Ravdeep Kaur v. The State of Punjab and Ors. I.L.R. (1985) P&H 345. It has been held that the eligibility for admission has to be seen according to the Prospectus issued before the Entrance Test. In the case of Amardeep Singh Sahota v. State of Punjab and Ors. MANU/PH/0491/1993, a Full Bench of this Court considered the similar situation and held in paragraph No. 17, as under:-

"17. It may at this stage further be stated that the Notification dated July 13, 1992 goes contrary to the policy which was laid down for admission in the Notification dated May 20, 1992, on the basis of which the Prospectus had been issued to the students and the students appeared for test on the basis of the policy laid down in the Prospectus. The Prospectus cannot subsequently be changed by the State Government to the detriment of the students to benefit certain other students. In Ravdeep Kaur v. The State of Punjab and Ors. I.L.R. (1985) P&H 343, a Division Bench of this Court had an occasion to consider the value of a Prospectus issued for admission to an entrance examination. It was held that the eligibility for admission to a course has to be seen according to the prospectus issued before the entrance examination and that the admission has to be made on the basis of instructions given in the prospectus as the instructions issued have the force of law. We agree with the view taken by the Division Bench. Since, the

Prospectus issued for admission to the 1992-93 Course in the medical college has the force of law and the students appeared in the examination on the basis of the instructions laid down in the said Prospectus, it was not open to the State Government to issue contrary instructions and as such also the Notification dated July 13, 1992 issued by the State Government is invalid in law".

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50. These observations of the Division Bench make it amply clear that the notification dated 25.7.2003, is unenforceable for the Academic Session 2003-2004 as all the candidates have completed the necessary formalities for seeking admission. As a result of the impugned notification, NRI quota candidates will not be able to seek admission in any of the Punjab Colleges. The final dates for making applications for admission has already passed. Therefore, we have no hesitation in holding that the respondents would be estopped from denying the admission to the candidates against the NRI quota, on the basis of the notification dated 25.7.2003. Their claim for admission will have to be governed by the Notification dated 14.5.2003 as incorporated in the Prospectus issued by the Baba Farid University, made available to the students from 26.5.2003."

C. *Dr. Himansu Sekhar Sahoo & Ors. vs. State of Odisha & Ors., 2013 (II) ILR CUT. 355* wherein it has been held as under:-

"13. Having heard the learned counsel for the petitioners, learned counsel for the State as well as the learned counsel for the intervenors, we are of the considered view that the main issue that arises for consideration in the present case is, as to whether the impugned guidelines framed by the State of Odisha and communicated to the DMET on 27.5.2013 can be permitted to govern admissions into P.G. Degree courses for "in-service candidates" for the year 2013.

14. In this respect, it would be important to take note of the stand of the State as contained in the counter affidavit and in particular, Paragraph-6 in which it is stated that the State

Government was facing problems as the in-service Doctors having minimum five years service were not sufficiently available and even if available were not qualifying at the entrance examination for which reason the State Government decided to reduce the period of service in the eligibility of "in-service candidates" from five years to three years. While this reason apparently forms the basis for the change of policy of the State Government, while we find the reason behind such decision to be germane and in the interest of the State, yet, the question remains as to whether such policy could cover admission for the academic year 2013-14 or not?

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19. Taking into consideration of the judgments of the Hon'ble Supreme Court in the case of Secretary, A.P. Public Service Commission (supra), K.Manjusree (supra) and Mohd. Raisul Islam and others (supra), it is well settled principle of law that once the process of selection has started, the prescribed selection criteria cannot be changed and further that, introducing of any change into eligibility criteria after the selection process has commenced, would amount to changing the game after the game has been played. It is also further well settled that in the present case, the selection process commenced from 12th November, 2012 (i.e. the last date of making online application) and therefore, any requirement/selection has to be made on the basis of the process/ policy/law existing on the said date. We are of the further considered view that while the State is at liberty to change its policy and we are not required to comment upon the justifiability and reasonability of such a change of policy. We are of the view that the impugned guidelines/policy would operate only prospectively i.e. from 27.5.2013 for future examinations that may be conducted but insofar as admission of P.G.(Medical) Course for "in- service candidates are concerned for the year 2013, Clause-F-2 of the impugned guidelines cannot be made to apply to such admissions into the seats reserved for "in-service candidates" for the year 2013-14.

D. ***Sandeep Kumar & Ors. vs. Union of India & Ors., 2015 (217) DLT 670*** wherein it has been held as under:-

"10. Applying the aforesaid dicta of law in the facts of the present case, it is manifest that the respondents did not prescribe any minimum qualifying marks, in the advertisement, for the interview which was of 25 marks. Therefore the respondents had no right to deviate, from the laid down criteria, to prescribe the minimum qualifying marks for the interview midway through the selection process. Once the rules of the game are settled, the same cannot be changed amidst the game or after the game is over. The action of the respondents prescribing the minimum qualifying marks for the interview is thus wholly arbitrary, unreasonable and unfair and not in accordance with the settled principles of law."

8. Learned counsel for petitioner points out that as a consequence of the impugned Notification, the petitioner was compelled to appear in counselling held on 12th April, 2016 as a General category student even though she had a tentative 17th rank in OBC. He contends that as a consequence of the exclusion of the petitioner, lesser meritorious OBC candidates have got admission in preferred list of departments. Thus, according to him, as a result of the incorrect decision of the University, merit has been prejudiced, within the OBC category.

9. Learned counsel for petitioner prays that the counselling which has taken place till date with regard to OBC seats be set aside.

10. He, however, clarifies that the petitioner is not challenging the policy dated 07th April, 2016 of the respondent University. The petitioner's only submission is that the same cannot be made applicable for the academic session 2016-17.

11. On the other hand, Ms. Anita Sahani, learned counsel for the respondent-University states that the impugned notification is applicable to all the candidates across the board and the petitioner has not been discriminated in any manner. She points out that in accordance with the impugned notification, two other candidates with certificates from outside Delhi with ranks 30 and 58 respectively have already taken admission in the general category.

12. Learned counsel for respondent-University submits that the impugned notification is in accordance with the judgment of the Supreme Court and different High Courts. A few of the judgments relied upon by the respondent-university are as under:-

A) ***M.C.D. Vs. Veena and Others, (2001) 6 SCC 571*** wherein the Supreme Court has held as under:-

“In these cases we have to decide the issue as to whether the certificates of candidates belonging to Backward Classes in States other than Delhi could hold good for the purpose of recruitment to the posts of primary and nursery teachers in Municipal Corporation of Delhi in the National Capital Territory of Delhi. An ancillary question would also arise as to whether the Other Backward Classes (for short “OBCs”) of the States other than Delhi can be treated as OBCs in Delhi and can be extended the benefits related thereto in Delhi.

2.Applications were invited from Indian citizens for appointment to the posts of primary and nursery teachers in Municipal Corporation of Delhi on 16-7-1996. In the course of the notification the following was mentioned by a note:

“Note.—Candidates, seeking reservation as ST/SC/OBC/Ex-S/PH may submit the prescribed certificate from the competent authority in support of their claim with applications. The reservation policy to the categories of ST/SC/OBC/Ex-S and Physically Handicapped candidates shall be followed in

accordance with the latest policy of Central/Delhi Government.”

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7.A careful reading of this notification would indicate that OBCs would be recognised as such in the Government of the National Capital Territory of Delhi as notified in the notification dated 20-1-1995 and further for the purpose of verification of claims for belonging to castes/communities in Delhi as per the list notified by the National Capital Territory of Delhi the certificates will have to be issued only by the specified authorities and certificates issued by any other authority could not be accepted. The Government of India has also issued instructions from time to time in this regard which indicated that a person belonging to OBC on migration from the State of his origin in (sic to) another State where his caste was not in the OBC list was entitled to the benefits or concessions admissible to OBCs in his State of origin and the Union Government, but not in the State to which he has migrated. Thus the High Court lost sight of these aspects of the matter in making the impugned order in either ignoring the necessary notifications issued in regard to classification of OBC categories or in the matter of verification thereof. Thus the order made by the High Court in this regard deserves to be reversed.

8. However, one aspect has to be borne in mind and that is the respondent candidates had made applications as if they belong to OBCs on the basis of the certificates issued by the State from which they migrated to the National Capital Territory of Delhi, but if the certificates issued in their original States of which they are permanent or ordinary residents were not good, the applications should have been treated as if they had been made in the general category and cases of the respondent candidates ought to have been considered in the general category.....”

B) Ms. Akanksha Dokania vs. Netaji Subhash Institute of Technology & Ors., WP(C) 5205/2010 decided on 28th October, 2010 wherein this Court has held as under:-

“9. As far as language in the prospectus on the basis whereof

notice was issued is concerned, on closer examination, it is found that the language is for admission for the 85% seats of the Delhi region as well as 15% seats for outside Delhi region. The said language cannot derogate the principle of law that those seeking admission in the Delhi region seats are required to produce the OBC Certificate from authorities in Delhi region only.”

C. *Deepak Kumar & Ors. v. District and Sessions Judges, Delhi, 2012 (132) DRJ 169 (FB)*

“45. In this case, the writ petitioners had applied for appointment to the post of Lower Division Clerk, pursuant to a public advertisement issued by the Officer of the District and Sessions Judge Delhi, calling for applications in respect of 412 vacancies to that post. Of these, 94 were reserved for OBC candidates, 52 for Scheduled caste candidates, and 47 for Scheduled Tribe candidates. The selection was to be on the basis of performance in the written test, a typing test and also an interview. The written test was held on 7-3-2010; the petitioners' applications were processed, and they were allowed to sit as scheduled caste or scheduled tribe candidates, on the basis of the certificate furnished by them. Their claims were based on their fathers being members of scheduled castes, notified in places i.e. States or Union territories other than Delhi. The writ petitioners qualified in the written test, and were called for a typing test, which was held on 17-4-2010. All of them qualified in the typing test, and were all asked to appear in the interview, which they did, on 13-5-2010. They were offered appointments by separate letters in June, 2010. The petitioners claim that at this time, they were medically examined, and even their antecedents verified. It was urged that they were working at the time they were offered appointment, and were consequently asked to submit resignation letters, to take up their new appointment as LDCs, which they did. It was submitted that they were informed that their applications for joining were withheld, on account of the judgment of the Supreme Court, in Subhash Chandra. Their counsel submitted that those scheduled caste candidates, who had applied and whose castes were notified in the Scheduled Castes and Tribes Union Territories Order, were, however, allowed to join. It was emphasized that the petitioners have been

treated unequally, and discriminated against, without any reason. Having accepted the scheduled caste or scheduled tribe applications, and selected them it was not open to the respondents to deny them the benefit. In WP 816/2011 it is further averred that though the petitioner had qualified and was called for interview, yet again, by a circular dated 13-9-2010 issued by the District Judge, a typing test was called for, in respect of those who had secured between 20 and 29 marks (out of 30 marks) in the previous typing test. For the first time, in respect of the same selection process, after the written test, a typing test and interview was conducted, and the petitioners were declared successful (in the first round) and had not joined, were directed to be treated as general category candidates. This circular (of 13-9-2010) stated, inter alia, that:

“Candidates of SC and OBC candidates who have migrated from outside Delhi and fulfil all conditions of general category candidate, will be called for typing test, if they have secured 74 marks in the written test. Those who clear the type test with speed of 30 words per minute will be considered for appointment to the post of LDC. Only those candidates will be called for interview who were not interviewed earlier.

Those who already joined the service in pursuance of the LDC examination in 2009, shall also have to pass the type test with speed of 30 words per minutes”

It was submitted that having treated the petitioners like scheduled caste candidates eligible to compete as such, after conclusion of the entire recruitment process, and declaration of results, of the written test, it was not open to the District Judge to impose further conditions, disqualifying them and treating them as belonging to another, or general category.

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56. The Supreme Court had occasion to consider the claim of reservation for OBCs under the Constitution in Veena's case. The Court was alive to the fact that OBCs are notified in respect of each State. The Court had to consider the facts from an almost identical fact situation where candidates from one State claimed

to be OBCs in another State or in another Union Territory, Veena (supra) pertained to the Union Territory of Delhi. The Court held that the OBC certificate issued by one State authority or in respect of a resident of a State with his origins in that State would be inadmissible in another State or Union Territory, for purposes of employment etc., and that the candidate cannot claim be an OBC in the other State. The Court pertinently held as follows:

“6. Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belonging thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they had been specified may be totally different. So the degree of disadvantages of various elements which constitute the data for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in another State, a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs.”

57. It is also clear that in the case of OBCs, the considerations which weigh with the executive government in issuing notifications are different than in the case of the Scheduled Castes and Tribes. The power to issue Notifications is not rigidly conditioned as in the case of Articles 341 and 342; Parliament also does not have exclusive jurisdiction. The degree of backwardness in the case of OBCs is of an entirely different kind than in the case of Scheduled Castes and Tribes. In view of the

above discussion, this Court is of the opinion that the above three writ petitions W.P. (C) 816/2011, 1713/2011 and 8368/2010 have to fail.”

13. Learned counsel for respondent-university submits that in view of the aforesaid law and it being in the knowledge of the petitioner, that the university will notify the policy of reservation and the fact that the university was bound by this Court’s judgement to relook into the matter, and the same was announced before the counselling had begun, it did not amount to any change in the rule of the game. She further submits that the petitioner is not entitled to draw any parity with candidates in the matter of **Sandeep Kumar** (supra) by reading the judgment in isolation.

14. Learned counsel for respondent-University lastly submits that even if there was any error on the part of the respondent-University in granting admission to OBC candidates from outside Delhi in the academic session 2015-16, it could not be used as a precedent inasmuch as the Indian Constitution does not recognize negative equality. In support of her submission, she relies upon the Supreme Court judgment in **Union of India & Ors. Vs. M.K.Sarkar, (2010) 2 SCC 59**.

15. Having heard learned counsel for the parties and having perused the paper book in the case of **Sandeep Kumar** (supra) , this Court finds that even the respondent-university in its counter affidavit filed in **Sandeep Kumar** (supra) had admitted that in accordance with its identical 2015-16 policy, Jat candidates belonging to other States were not only entitled to but had been granted the benefit of reservation in OBC category in respondent-university.

16. Consequently, on the date the petitioner had applied for admission, she was entitled to reservation in OBC category even though she had an OBC certificate from State of U.P.

17. Also, the fact that this Court in ***Sandeep Kumar*** (supra) had directed the respondent-university to relook at its policy means that in accordance with policy prevailing on the date of the judgment in ***Sandeep Kumar*** (supra), the Jat candidates belonging to other States were entitled to the benefit of OBC reservation.

18. The fact that the respondent-university had a relook at its policy and issued the impugned notification means that it is at variance with its 2015-16 policy. Consequently, the contentions of learned counsel for respondent-university that there was no change in the reservation policy or there had been errors in granting admission in the previous academic year, are not correct.

19. In the opinion of this Court, even though reservation in PGMC was to be in accordance with the policy of the university from time to time, it cannot mean that the university can change it after the process of selection had commenced.

20. The Supreme Court in ***Parmender Kumar and Others v. State of Haryana and Others, (2012) 1 SCC 177*** had an occasion to deal with a similar clause of “*as applicable from time to time*”. In the said judgment, the Supreme Court held that once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates who had already been selected for the aforesaid courses. It was held that rules cannot be changed once the selection process had begun. The relevant portion of the said judgment is reproduced hereinbelow:-

“6. What is of importance is the method of selection and admission which was made a part of the Prospectus, wherein, in

Clause 6 relating to determination of merit, in sub-clause (iii), it was indicated as follows:

“6. (iii) The conditions for NOCs fixed by the Government of Haryana vide Letter No. 2/123/05/I-HB-I dated 5-12-2008 for HCMS doctors who want to join PG courses are given at Annexure D. (However, latest government instructions issued from time to time will be followed.)”

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15. Mr Ahmed submitted that one could possibly have accepted the change in the criterion for admission, if it had been made before the prospectus was acted upon, but once the prospectus was acted upon, the entire process of admission to the postgraduate or diploma courses would be governed by the said prospectus and any change and/or alteration of the conditions of the prospectus thereafter, would seriously prejudice the candidates who had already been selected.

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26. From the facts as disclosed, the only question which emerges for decision in these appeals is whether the State Government had any jurisdiction and/or authority to alter the conditions relating to admission in the postgraduate or diploma courses in the different disciplines in medicine which had earlier been indicated in the Prospectus, once the examination for such admission had been conducted and the results had been declared and a select list had also been prepared on the basis thereof. In other words, once the process of selection had started on the basis of the terms and conditions included in the Prospectus, was it within the competence of the State Government to effect changes in the criterion relating to eligibility for admission, when not only had the process in terms of the Prospectus been started, but also when counselling was to be held on the very next day, which had the effect of eliminating many of the candidates from getting an opportunity of pursuing the postgraduate or diploma courses in the reserved

HCMS category.

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29. As has also been pointed out hereinbefore, this Court in Rajiv Kapoor case took notice of the fact that the Full Bench, on whose decision the High Court had relied, ultimately directed that the selections for admission should be finalised in the light of the criteria specified in the government orders already in force and the prospectus, “after ignoring the offending notification introducing a change at a later stage”. (emphasis supplied) In fact, this is what has been contended on behalf of the appellants that once the process of selection of candidates for admission to the postgraduate and diploma courses had been commenced on the basis of the prospectus, no change could, thereafter, be effected by government orders to alter the provisions contained in the prospectus. If such government orders were already in force when the prospectus was published, they would certainly have a bearing on the admission process, but once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates, who had already been selected, an opportunity of admission in the aforesaid courses.

21. Since the Supreme Court’s judgment is a binding judgment and the same had not been considered in any of the judgments cited by learned counsel for respondent-University, this Court is of the opinion that it is bound to follow the same. In any event, the judgments relied upon by the respondent-University are clearly distinguishable as they do not deal with the effect of the expression “*as applicable from time to time.*”

22. This Court is, however, of the view that the petitioner is not entitled to the relief of setting aside the first counselling that has already taken place. It is pertinent to mention that the impugned notification was issued on 07th

April, 2016, whereas the present petition was filed on 25th April, 2016. Though the petitioner states that the Court was closed for vacation between 09th and 18th April, yet in the opinion of the Court, she could have always mentioned the matter and got it listed.

23. Also setting aside the counselling with regard to OBC candidates would not be fair to the selected candidates as they may have refused admission in some other course or institute in view of being offered admission with the respondent-university. Further, the selected candidates are not parties before this Court and it would not be proper to pass any order behind their back. However, it is clarified that future counselling for the present academic years regarding reservation to OBC candidates for PGMC would take place without giving effect to the notification dated 07th April, 2016.

24. With the aforesaid direction, the present writ petition and pending applications stand disposed of.

MAY 17, 2016

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MANMOHAN, J