

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

1. CWP no.18240 of 2018 (O&M)

Ashu Hooda

....Petitioner(s)

Versus

Union Territory Chandigarh and others

...Respondent(s)

2. CWP no.17407 of 2018 (O&M)

Harleen Kaur Bedi

....Petitioner(s)

Versus

Union Territory Chandigarh and others

...Respondent(s)

3. CWP no.19851 of 2018 (O&M)

Archit Sharma and others

....Petitioner(s)

Versus

Union Territory Chandigarh and others

...Respondent(s)

4. CWP no.21558 of 2018 (O&M)

Nitya Malhotra

....Petitioner(s)

Versus

Union Territory Chandigarh and others

...Respondent(s)

5. CWP no.21742 of 2018 (O&M)

Rhea Sharma

....Petitioner(s)

Versus

Union Territory Chandigarh and others

...Respondent(s)

Date of Decision : 31.08.2018

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE MAHABIR SINGH SINDHU**

**Present:- Mr. Girish Agnihotri, Sr. Advocate with
Mr. Vijay Pal and Mr. Ishaan Bhardwaj,
Advocate for the petitioners**

in CWP nos. 18240, 19851 & 17407 of 2018
Mr. Vijay Pal, Advocate for petitioner in CWP no. 21742/ 2018

Mr. Gurminder Singh, Sr. Advocate with
Mr. R.P.S.Bara, Advocate for petitioner
in CWP no. 21558 of 2018

Mr. Suman Jain, Advocate for UT, Chandigarh

Ms. Vrinda Gupta, Advocate for Mr. Prateek Mahajan,
Advocate for respondent no.1 and 2 in CWP no. 18240/ 2018

Mr. Harsh Aggarwal, Advocate for CBSE
in CWP no. 18240, 17407 & 19851 of 2018

Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. Arjun Pratap Atma Ram

Mr. Akshay Bhan, Sr. Advocate with
Mr. Amandeep Singh, Advocate

Mr. Sajjan Singh, Advocate for respondent nos. 17 &40
in CWP no.19851 of 2018

Mr. Raghav Goel, Advocate

Mr. R.S.Bhatia, Advocate
for respondent no.9 in CWP no. 18240 of 2018

Mr. B.R.Gupta, Advocate for respondent no.72
in CWP no. 19851 of 2018

Mr. Sarthak Gupta, Advocate for respondents
no.19, 31, 57, 61 in CWP no.19851 of 2018

Mr. Ashish Bansal, Advocate for
respondent no.46 in CWP no. 18240 of 2018

Mr. Arvinder Arora, Advocate

Mr. Gurinder Singh, Advocate

Mr. Vikas Chatrath, Advocate
for respondent no.66 in CWP no. 18240 of 2018

Mr. Dinesh Chaudhary, Advocate for respondent no.41
in CWP no. 19851 of 2018

Mr. Saurabh Arora, Advocate Legal Aid counsel
for respondent no.32 in CWP no. 18240 and 19851 of 2018
Mr. Ankit Chahal, Advocate for respondent no.58

in CWP no. 19851 of 2018
Mr. R.P.Dangi, Advocate
Mr. R.P.S.Ahluwalia, Advocate

Mr. Rohit Sharma, Advocate
for respondent in CWP no. 18240 & 19851 of 2018

Mr. Sunil Garg, Advocate for
respondent no.13 in CWP no. 18240 & 19851 of 2018

Mr. Chanderhas Yadav, Advocate for respondent no.33
in CWP no. 19851 of 2018

Mr Vaneet Kumar Sharma, Advocate for respondent no.10
in CWP no. 19851 of 2018

Mr. Vineet Dhanda, Advocate for respondent no.71
in CWP no. 19851 of 2018

Mr. H.S.Bhatia, Advocate

MAHESH GROVER, J.

By this order we will dispose of five writ petitions bearing CWP nos. 18240, 17407, 19851, 21558 and 21742 of 2018 since they involve commonality of issues that are germane to the admission process qua MBBS seats in Government Medical College and Hospital, Sector 32, Chandigarh(hereinafter referred to as 'Medical College, Chandigarh'). The issues raised in the petition have an uncanny propensity to emerge each year during the admission season. Since the time in which these complex issues are to be decided is compressed to a schedule prescribed, providing no deviation it often stretches the Courts to the maximum.

All the petitioners as also the respondents have qualified the Central Common Examination which goes by the nomenclature of National Eligibility Entrance Test (hereinafter referred to as the 'NEET'). All of them have applied for the Medical College, Chandigarh with the private respondents succeeding in making the grade while the petitioners in list of

deprived candidates.

Concededly the scheme of examination provides for All India seats and once those seats are exhausted on the basis of merit obtained by an individual in the said examination, the remaining seats revert to the State quota. All India examination is not in dispute but to understand the workability of the allocation of seats, it would be appropriate to refer to some of the provisions of the Information Bulletin of the NEET which gives an insight into the operational aspect:-

“The Central Board of Secondary Education will conduct the National Eligibility Cum Entrance Test for admission to MBBS/BDS Courses in the session 2018-19 on 6th May, 2018 (Sunday).

- The responsibility of CBSE is limited to the conduct of the entrance test, declaration of result and providing All India Rank to the Directorate General of health Services, Ministry of Health and Family Welfare, Government of India for counselling of 15% All India Quota Seats, Deemed Universities/Central Universities/Seats of ESIC & AFMC including BHU & AMU and providing the result to the State Counselling Authorities and Admitting Institutions.
- The result of NEET (UG) may be utilized by other entities of Central/State Governments for admission purpose in accordance with their rules.
- The Counselling for successful candidates under 15% All India Quota seats, Deemed Universities/Central Universities/Seats of ESIC & AFMC including BHU & AMU will be conducted by the MCC/GGHS. The counselling for admission in seats under the control of other States/Universities/Institutions shall be

conducted as per the notifications issued separately by the authorities concerned.

- During counselling, the eligibility criteria, self-declaration, various documents, etc. of the eligible candidates shall be verified as per norms specified by the respective authorities and Medical/Dental Colleges.

Admissions to all seats of MBBS/BDS will be done through NATIONAL ELIGIBILITY CUM ENTRANCE TEST (UG)- 2018. There are following quota seats available:-

- i. All India Quota Seats
- ii. State Government Quota Seats
- iii. Central Institutions/Universities/Deemed Universities
- iv. State/Management/NRI Quota Seats in Private Medical/Dental Colleges or any Private University
- v. Central Pool Quota Seats.”

The eligibility for 15% All India quota seats is as below:-

“3. ELIGIBILITY FOR 15% ALL INDIA QUOTA SEATS

- (a) Indian Nationals, Non Resident Indians (NRIs), Overseas Citizen of India (OCIs), Persons with Indian Origin (PIOs) & Foreign Nationals are eligible for 15% All India Quota Seats.
- (b) Candidates from State of J & K
 - (i) Students from State of J & K are NOT ELIGIBLE for 15% all India quota seats as State of J&K has opted out of All India Scheme since its inception. If they claim eligibility, they must submit online Self Declaration which will be generated and printed automatically alongwith confirmation page for the record and to present during counselling. The draft self-declaration is given in Appendix – III.
 - (ii) The online Self Declaration of the candidates will be verified at the time of counselling and if found to be false at any time, the candidature/admission of such candidates shall be cancelled and criminal proceedings may be initiated against them.
 - (iii) Candidates from the State of J & K can appear in NEET (UG) for admission to Private Medical/Dental Colleges or any Private/Deemed University and Armed Forces Medical College (AFMC), Pune subject to the fulfilment of eligibility conditions.
 - (iv) The Government of Andhra Pradesh & Telangana vide their letter no.13021/C1/2016 dated 06.11.2017 & letter

no.7072/C1/2017 dated 07.11.2017 respectively have informed that Government of Andhra Pradesh and Government of Telangana have decided to join and contribute to the All India Quota seats. Accordingly, the candidates of these States have also become eligible for 15% All India Quota seats (As per letter No. F.No. V.26012/05.2017-MEP/MEC dated 10.01.2018, Directorate General Health Services, Ministry of Health & Family Welfare, Govt. of India)."

The admissions and reservations is to be worked out as below:-

"4. ADMISSION AND RESERVATION

An All India Merit List of the qualified candidates shall be prepared on the basis of the marks obtained in the NATIONAL ELIGIBILITY CUM ENTRANCE TEST (UG) and candidates shall be admitted to MBBS/BDS courses from the said list only by following the already existing reservation policy. CBSE will provide All India Rank. Admitting Authorities will invite applications for counselling and merit list shall be drawn based on All India Rank by the Admitting Authorities. Admission to MBBS/BDS Courses within the respective categories shall be based solely on marks obtained in the National Eligibility Cum Entrance Test. The admitting/counselling authorities will draw merit list of the candidates in the respective categories declared by the candidates at the time of applying for admission/counselling."

and importantly the admission in State Medical College which is relevant for our purpose is as below:-

"(b) ADMISSION IN STATE MEDICAL COLLEGES/UNIVERSITIES/ INSTITUTIONS/PRIVATE MEDICAL COLLEGES FOR SEATS OTHER THAN 15% ALL INDIA QUOTA.

- (i) Admission under State Quota Seats shall be subject to reservation policy and eligibility criteria prevailing in the State/Union Territory as notified by the respective State/Union Territory from time to time.
- (ii) The reservation of the seats in medical colleges for respective categories shall be as per applicable laws prevailing in State/Union Territory concerned.
- (iii) Admission to MBBS/BDS Courses in Private Medical Colleges shall be subject to policies of the Government of India/State/Union Territory.”

What becomes apparent from the aforesaid is the existence of a Centralized admission process where, after the Entrance Examination the CBSE will provide an All India Rank to the admitting authorities and after the 15% quota for All India seats is exhausted the other seats will revert to the States with the assigned quota to be filled up on the basis of reservation policies and eligibility criteria provided by the respective States/UTs, as notified from time to time. The responsibility to provide the All India ranking is of the CBSE which is required to forward the information to the Director General, Ministry of Health, Govt. of India to be provided to the admitting authorities. The following is the procedure for supplying the merit list for seats other than 15% All India quota:-

“4. MERIT LIST FOR SEATS OTHER THAN 15% ALL INDIA QUOTA

- (a) CBSE will provide All India Rank. Result will be given to the DGHS, Ministry of Health and Family Welfare, Govt. of India to provide the same to the Admitting Authorities.
- (b) Admitting Authorities will invite applications for Counselling and merit list shall be drawn based on All India Rank by the Admitting Authorities subject to their applicable rules.
- (c) The admitting/counselling authorities will draw merit list of the candidates in the respective categories declared by the candidates at the time of applying for admission/counselling based on State rules.”

As per the allocation the UT, Chandigarh gets 77 seats from which if the reserved seats are reduced it leaves 63 seats for the General Category. We may for the purposes of reference extract the details of the seats available

Institution: Government Medical College & Hospital Sector 32, Chandigarh

A-1 Total No. of seats : 100

A-2 Distribution of seats:

		Category	%Reservation	No. of seats
1.	All India quota		15%	15
2.	Central Pool			02
3.	Foreign Indian Student (NRI)			06
4.	UT, Chandigarh Pool Total seats 77	Scheduled caste (SC)	15%*	12*
		Persons with disability (PwD)	3%**	02*
		General		63**

Important

* In calculation of percentage of seats for reserved category/categories the figure has been rounded off to lower whole number if decimal point is less than 0.5 and to higher whole number if the decimal point is 0.5 or more.

** Seats available for General category and persons with Disability (PwD) may change, subject to clarification received from the competent authority regarding percentage of reservation for PwD category.

The eligibility criteria and admission procedure for 77 UT seats is as below:-

A-3: Eligibility criteria and admission procedure for 77 UT Chandigarh Pool seats (General category), SC category, Person with Disability Category).

1. The candidates must fulfill relevant **General**

Eligibility Criteria (page 7-8)

2. The candidates should have passed 12th standard examination (qualifying examination) from schools/colleges recognized by the Chandigarh Administration and situated in the Union Territory of Chandigarh as regular student of the said school/college. This condition is waived off in respect of wards of serving defence persons/ex-servicemen vide letter no.19/1/3-IH(3)-2007/18322 dated 14.9.2007.”

In CWP no. 21558 of 2018 the petitioner has mounted a challenge to the aforesaid condition no.2 on the ground that the Union Territory, Chandigarh (hereinafter referred to as the 'UT, Chandigarh') has not provided the criteria for residence as one of the eligibility conditions and merely restricted the eligibility to candidates who have passed 12th standard examination from schools/colleges recognized by the UT, Chandigarh and situated in the territory of Chandigarh. The reason why they perceive this condition to be arbitrary is the existence of a preference for bona fide residents in the neighbouring States of Punjab and Haryana. For instance, in Punjab the following criteria has been prescribed:-

“11. The candidate should be a bonafide resident of Punjab. The resident status of Punjab state shall be taken in terms of Punjab Government Department of Personnel and Administrative reforms (PP-II Branch) letter no.1/3/95-3 PP II/9619, dated 6th June, 1996, ID no. 1/2/96-3 PP-2/8976 dated 7th July, 1998 and ID no. 1/3/95-3PP/II/81 dated 1st January, 1999

and any further instructions issued by the Department of Personnel, if any, and the same shall be adhered to. Candidate must have passed 10+1 and 10+2 examinations from Punjab. Candidate who passed his/ her 10+1 and 10+2 examinations or other equivalent examination from a recognized school/institution situated in Chandigarh (Union Territory), who is bonafide resident of Punjab shall also be eligible.

12. In view of the judgment dated 2.7.2014 in CWP no. 6009 of 2014 and connected cases by the Hon'ble Punjab and Haryana High Court the eligibility criteria from academic session 2019-2020 onwards shall be inter alia as under:

“The candidate shall have passed his/her 10th Class examination and also 10+1 and 10+2 from the State of Punjab.”

Almost similar is the situation in the State of Haryana where a bona fide resident of the State has been defined and acquires an edge while getting admission in the institutes situated in the said State. We need not extract it here but suffice it to say that the condition exists.

While impugning the said condition, the petitioners contended that since the allocation of seats in the State quota is meant to be consumed by the people who belong to that State the candidates from Chandigarh who acquired their eligibility condition from the Chandigarh and are also residents of Chandigarh stand to lose out considering even the residents of

Pradesh would gain eligibility by merely passing their qualifying examination i.e +2 from a recognized school/college situated in Chandigarh. It is contended that condition in its existing form sans a specific condition defining the resident of the UT, Chandigarh is arbitrary and discriminatory. Even though the underlying tone and tenor of the eligibility condition would suggest an importance of residence. Our attention has repeatedly been drawn to the condition no.2 where emphasis is provided to the word “situated in UT, Chandigarh”.

It has been argued further by the petitioners that once a candidate claims a preference in a particular State he or she should be excluded from laying a claim to a seat in the institute situated in other State/ UT, Chandigarh.

With reference to certain specifics that have been provided in the petition and also during the course of hearing, the petitioner contends that most of the respondents were applicants in other States and had actually gained admission in colleges in those States but have been admitted in college in UT, Chandigarh which bears out their grievance as persons who belong to Chandigarh have largely been deprived of the seats intended for the UT, Chandigarh Pool.

Sr. No	Name & Father's Name of candidate	DOB & Category	NEET overall AIR	Other State applied under State quota	College allotted in their respective State as per counselling 1
1.	Arshita Bhardwaj Vijay Kumar Bhardwaj	12.8.2000 General	514	Punjab	Govt. Medical College Patiala

2.	Trisha Bagla Ashwani Kumar	18.2.2001 General	630	Haryana	Pt. B.D.Sharma PGIMS, Rohtak
3.	Priya Dagar Devender Singh Dagar	12.3.2000 General	688	Haryana	Pt. B.D.Sharma PGIMS, Rohtak
4.	Parth Kapoor Sudhir Kapoor	6.7.2000 General	1142	Haryana	Pt. B.D.Sharma PGIMS, Rohtak
5.	Digvijay Singh Ashok Kumar	16-12- 1999 General	1169	Haryana	Pt. B.D.Sharma PGIMS, Rohtak

The respondents have controverted the arguments raised by the petitioners and have contended that the petitioners have not approached the Court with clean hands as they themselves are sailing in the same boat, having applied in other States unsuccessfully. In so far second argument about the vires of the condition no.2 is concerned it is contended that the condition as it exists can hardly be termed to be arbitrary. In any case it is a policy decision which the UT, Chandigarh has adopted and the Courts would have no role to mandate a policy leave alone a directive to incorporate a particular clause.

It is next contended by the respondents that since they were eligible in view of the clear stipulation in the prospectus they have rightly been granted admission as they even otherwise were in merit. Besides, this an argument has been raised that the petitioners were conscious of the stipulation they now find offensive after they exercised their option. The counselling started way back in July and the petitioners were filed after a delay which in itself would be sufficient to invite a dismissal from this Court. Towards the end a submission was made that after the admission the classes have commenced and the selected respondents have since been attending the same. Hardship has been pleaded as the college where some of

the respondents were granted admission in Punjab or Haryana as the case may be and the seats, therein have been given up in preference to the admission in Chandigarh.

We have heard learned counsel for the parties.

In case titled as **Dr. Pradeep Jain etc. etc. vs. Union of India and others** reported as 1984 AIR (SC) 1420, the Hon'ble Supreme Court while emphasizing selection based on merit also concluded that even though wholesome reservation cannot be made by a State Government on the basis of domicile or residence but if provided cannot be held to be unconstitutional and void or being in conflict with Article 14 of the Constitution of India. Likewise if a provision for institutional preference is made, the same also would be permissible. We may for the purposes of reference extract some portion of the observations made by the Hon'ble Supreme Court in Dr. Pradeep Jain's case (supra):-

“We are glad to find that the policy of the Government of India in the matter of reservation based on residence requirement and institutional preference accords with the view taken by us in that behalf. We may point out that even if at some stage it is decided to regulate admissions to the M.B.B.S. course on the basis of All India Entrance Examination, some provision would have to be made for allocation of seats amongst the selected candidates on the basis of residence or institutional affiliation so as to take into account the aforementioned factors.

20.The only question which remains to be considered is

as to what should be the extent of reservation based on

residence requirement and institutional preference. There can be no doubt that such reservation cannot completely exclude admission of students from other universities and States on the basis of merit judged in open competition. Krishna Iyer, J. rightly remarked in Jagdish Saran's case (supra) of the Report:

"Reservation must be kept in check by the demands of competence. You cannot extend the shelter of reservation where minimum qualifications are absent, Similarly, all the best talent cannot be completely excluded by wholesale reservation. So a certain percentage which may be available, must be kept open for meritorious performance regardless of university, State and the like. Complete exclusion of the rest of the country for the sake of a province, wholesale banishment of proven ability to open up, hopefully, some dalit talent, total sacrifice of excellence at the altar of equalisation when the Constitution mandates for every one equality before and equal protection of the law-may be fatal folly, self-defeating educational technology and anti-national if made a routine rule of State policy. A fair preference, a reasonable reservation, a just adjustment of the prior needs and real potential of the weak with the partial recognition of the presence of competitive merit-such is the dynamics of social justice which animates the three egalitarian articles of the Constitution."

We agree wholly with these observations made by the learned

Judge and we unreservedly condemn wholesale reservation made by some of the State Governments on the basis of 'domicile' or residence requirement within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the university or the State excluding all students not satisfying this requirement, regardless of merit. We declare such wholesale reservation to be unconstitutional and void as being in violation of [Article 14](#) of the Constitution.”

In a recent judgment rendered by the Hon’ble Supreme Court in Writ Petition no. 766 of 2018 titled as **Rajdeep Ghosh vs. State of Assam and others** decided on 17.8.2018, a similar view was taken in approving the action of the State of Assam providing for a preferential treatment to the students who had passed their qualifying examination from the State of Assam.

The logical corollary from the above would be that the State would be very well within its right to prescribe such a criteria of preference to its own residents in the matter of admission but the issue in the present cases is that having not provided a preference can the Court in the exercise of its powers under Article 226 of the Constitution of India issue a mandate to the State/UT, Chandigarh to adopt a particular course.

In the exercise of powers of judicial review we cannot declare the provision in its existing form to be in conflict with law simply because it would have been eminently desirable to include a clause of preference based on the resident status for UT,

Chandigarh enjoys, being a capital of two States of Punjab and Haryana. There is an influx of officers from both the States in the Administration and we feel that non inclusion of clause of residence probably keeps the window open for the people of Punjab and Haryana to gain access to higher education in U.T, Chandigarh as also in their own States, in providing a bare minimal eligibility condition of having passed +2 examination from a recognized school/college situated in U.T, Chandigarh whereas the residents of Chandigarh would have no such advantage of claiming preference on the basis of residence in Punjab and Haryana and would be deprived similarly in Chandigarh as well.

The U.T, Chandigarh, thus comes across as a baby which both the parents want to cradle and cuddle but do not want to own it up.

We also notice the constraint of time as the admissions have to be concluded by 31.8.2018, for the present academic session with no flexibility attached to it.

It would thus be futile even if we mandate such a course to the U.T, Chandigarh assuming we could. But we have no hesitation to state that clause as it exists has the potential (as has been shown in its workability) of worming into the claims of those who have studied in Chandigarh almost altogether. It is a case of double whammy for them as they are left to compete only against 15% All India quota whereas children from other States compete in 15% All India quota also while being safely ensconced in their home States.

The clause as it exists therefore is clearly arbitrary as it does not take into consideration the aspect of residence which frustrates the very

concept of seat allocation to UT, Pool.

We,therefore bind the U.T, Chandigarh to a mandate of consideration within a period of two months from the date of our decision so that ample time is available for the people to be aware in the next academic session.

Having said so we now revert to the other aspect of the controversy as to whether the candidate who has opted for a particular State by claiming a benefit of residence can press his/her claim in any other State or U.T, Chandigarh.

We may add here that most of the petitioners and the respondents have exercised their options of a benefit of residence in different States and the 'finger pointing' at each other does not enhance the case of either of them. We would therefore confine ourselves not to the cases of individuals but shall formulate an opinion on the larger principle and leave it to the admitting authorities to work out the consequences.

The petitioners have relied upon a judgment of this Court in CWP no. 12155 of 2014 titled as '**Akanksha Mehta vs. UT, Chandigarh and others**' decided on 16.9.2014 where learned Single Judge has held such a condition as one in question to be bad. In Letters Patent Appeal preferred against the said judgment, the same was disposed of as infructuous but the question of law was kept open for determination.

To be fair to the respondents, it would be appropriate to refer to the decision relied upon by them in case titled as '**Narmada Bachao Andolen vs. State of Madhya Pradesh and another**' reported as 2011 AIR (SC) 1989 wherein in para 35 Hon'ble Supreme Court observed that the Government has power to frame or challenge policy on the basis of ground realities and in the exercise of power of judicial review it can be challenged

only if it offends some statute or constitutional provision. It is contended that neither does the policy of the UT, Chandigarh offend any statute nor is it in conflict with any constitutional provision. Besides delay, the plea of estoppel has also been raised by the respondents to contend that since the petitioners have participated in the process they cannot be permitted to challenge the result having participated and lost.

Sh. Rajiv Atma Ram, learned senior Advocate representing some of the respondents apart from making a similar submission as the one noticed above has referred to a judgment of this Court in case titled as **Harleen Cheema vs. State of Punjab and others** reported as 2014(1) SCT 185 where a candidate who had passed +2 examination from a school in Chandigarh though a resident of Punjab was also held eligible on the ground that the city of Chandigarh is capital of State of Punjab and thus enabled to admission. We extract the portion of the observations of this Court as below:-

“5. It is not in dispute that 10+2 examination has been passed by the petitioner from the school located in Chandigarh. In order to contend that passing of 10+2 examination from a school in Chandigarh would amount to passing of 10+2 examination from the State of Punjab, learned counsel for the petitioner relies upon the observations of the Supreme Court in case Raminder Singh Nagra Vs. Jagjit Singh Puri and others 2010(2) S.C.T. 554. The controversy factually in that case was that the petitioner was the son of a Central Government employee posted at Chandigarh in the office of

Accountant General, Chandigarh. He sought admission to the MBBS course on the ground that the children of the employees working in the State of Punjab are entitled to get preferential consideration in the matter of admission to MBBS course. The petitioner was denied admission on the ground (i) that he had not passed 10+2 course from the State of Punjab and (ii) that his father was not working in connection with affairs of the State of Punjab.

6. The High Court rejected the petition. The Supreme Court took cognizance of the fact that undisputedly two conditions to be met to qualify for the course were that the candidate should have passed 10+2 course from the State of Punjab and that he/she should be a ward of an employee of State Government Institutions/Undertakings who are posted in Chandigarh or in Punjab in connection with the affairs of Punjab Government for a period of three years. Qua the second aspect, the petitioner's father working in the office of Accountant General, Punjab, was held to be entitling the petitioner to be treated as a person in the preferential category. We may note that this aspect does not concern with the matter in issue at hand. However, while considering the first aspect aforesaid i.e. whether the fact that the petitioner herein having passed the examination from a Secondary School in Chandigarh, would be entitled to be treated as a candidate who has

passed examination from the State of Punjab, it has been observed that Chandigarh being the Union Territory, which is also capital city of State of Punjab, is to be treated as part of the State of Punjab. Thus the petitioner therein was held entitled to exemptions.

7. Learned counsel for the petitioner thus submits that only declaration he seeks from this Court is in terms of the Supreme Court judgment i.e. that the petitioner before us having passed her 10+2 examination from a recognized school in Chandigarh being capital of State of Punjab, should be treated as a candidate who has cleared her 10+2 examination from the State of Punjab.

8. In our view, the aforesaid issue is no more res-integra in view of what has been observed by the Hon'ble Supreme Court in the aforesaid judgment, albeit in that factual context. No doubt, a judgment is in the context of the facts of a particular case and in that context the ratio of the judgment has to be seen. If we see the said ratio, while coming to a conclusion in favour of the petitioner, in that case one of the parameters requiring the candidate to clear 10+2 examination from the State of Punjab would be fulfilled if such a candidate has passed 10+2 examination from a school in Chandigarh on the ground that Chandigarh was the capital of State of Punjab. This ratio would apply with all

force even in the present case keeping in mind the limited declaration which is being sought now by learned counsel for the petitioner.”

In another judgment 2015(1) ILR (Punjab) 122 titled as **Abheyjit Singh vs. Chandigarh Administration, Chandigarh** this Court observed as below:-

3. It is the contention of counsel for the petitioners that because of the posting of fathers of the petitioners in Patiala, being Government employees of the State of Punjab, they had undertaken their educational qualifications at Patiala, which is in the State of Punjab. Chandigarh being the capital of Punjab, merely because it is a Union Territory, the wards of Punjab Government employees cannot be excluded from consideration for admission to the seats of M.B.B.S./B.D.S. Course under the 85% quota on the ground that they have not passed their 10+2 qualifying examination from a school/ College on regular basis situated at Chandigarh.

10. The grouse of the petitioners primarily relates to the condition (2) which is stated to be in violation of the law as laid down by the Supreme Court in the case of Raminder

Singh Nagra's case (supra), where a student, who had passed 10+2 course from the Union Territory of Chandigarh, was directed to be treated as a candidate who had cleared 10+2 examination from the State of Punjab, being the capital of State of Punjab has, thus, to be treated as part of State of Punjab, although it was a Union Territory. The said principle would be applicable vice-versa as well. The status of the Chandigarh as capital of State of Punjab does not vary and remains the same and, therefore, the fathers of the petitioners being employees and posted at Patiala, virtually forced the petitioners to study and qualify their 10+2 examination from Patiala, cannot be a reason good enough to deprive them the benefit of the seats, which are available in the Medical College of the capital of the State of Punjab, when a student of 10+2, who had passed his examination from Chandigarh, has been treated as having passed from the State of Punjab. Similar benefit is required to be given to the students, who had passed their 10+2 examination from the State of Punjab for seeking admission under the U.T. Pool quota seats of Chandigarh.

11. This plea of the petitioners cannot be accepted

in the light of the fact that the Government Medical College and Hospital, Sector 32, Chandigarh, is not established, owned or administered and run by the State of Punjab but is under the Union Territory of Chandigarh and the Chandigarh Administration controls and runs the same. Merely because Chandigarh is the capital of State of Punjab does not ipso-facto make eligible a candidate who has passed his 10+2 examination from the State of Punjab. The ratio culled out by the Supreme Court in Raminder Singh Nagra's case (supra) would not be applicable to the students who had passed their 10+2 examination from the State of Punjab, especially when the conditions, which were laid down in the prospectus issued by the State of Punjab, provided for other conditions also, which were required to be fulfilled by the candidates and there were certain exceptions also provided, which is not the case here.”

There is no quarrel with this proposition as long as the condition exists in its present form but we are confronted with a converse proposition than the one considered in the above judgments. Indeed the residents of Punjab and Haryana would be benefitted in passing the solitary class +2 from Chandigarh as the capital of the States and the aspiring student would be considered a resident of Punjab but would the employees of

Haryana be given the same treatment by their parent States in giving preference to them on the basis of residence by construing them as residents of the State. The answer is clearly in the negative.

It is thus a case where the benefit of residence once claimed by a student in a particular State should be restricted to that State and not permitted to claim any benefit in the other State except to compete in the All India quota, particularly when the whole scheme of admission flows from a centralized concept, speaks of State quotas, to be filled up on the basis of criteria prescribed by the State.

The holistic picture that emerges is All India merit is prepared and 15% seats are allocated and consumed in the All India quota whereafter the remaining seats have to be filled up by the States as per the allocated quota. If the All India counseling is over, the left over seats also revert back to the State quota which are then in addition to the State quota seats. As noticed above UT, Chandigarh has to its share 77 seats; out of which after reserved seats are excluded leaves 63 seats for the General category. The whole scheme of admission qua the State quota seats would thus centre around the preference given by an incumbent for a particular State and having done so cannot be permitted to a claim in other State or UT, Chandigarh. Each candidate knows which side his bread is buttered. If we accept the arguments of respondents that all the incumbents can opt for various States simultaneously then it raises an absurd picture and almost unworkable process of admission and the very meaning of the "State quota" would lose its significance. It is for this reason ostensibly that the benefit of residence is provided so as to enable the State to admit students from within

residence by the UT, Chandigarh, adversely affects the filling up of UT, Chandigarh seats as it opens the doors for incumbents from the neighbouring States who not only derive the benefit in their own State but would virtually poach upon the seats of the U.T Chandgiarh quota as well.

There is some material which would fortify our view in this regard. To make things easier for the candidates some information has been provided on the website of the NEET(UG) and while dealing with the frequently asked questions it has been noticed against item no.80 as below:-

Frequently Asked questions (FAQs) on NEET (UG)

Sr. no.	Question	Reply
80	I am from Uttar Pradesh but residing in Delhi from past 10 years. What should I fill in the column “ State of eligibility (for 15% All India Quota) ”	Such decisions need to be taken by the candidates themselves. However, it is clarified that such candidates can apply for counseling in both Uttar Pradesh and Delhi and during the counseling his/her eligibility for the 85% quota seats will be checked by the State Admitting Authorities and if he is found eligible, he will be given admission otherwise not.

This also becomes evident from the affidavit that has to be compulsorily filled up wherein it has been provided as below

“ xxxx

2. that my child/ward has not obtained the benefit of Residence for admission in MBBS/BDS courses in any other State/UT except central counseling by MCC/DGHS.
3. That my child/ward has applied/ has not applied (whichever is applicable) elsewhere in any other

State/UT for admission to MBBS/BDS Courses, session
2018 in State Quota Counselling.”

The whole purpose of having a State quota is to enable largely the residents of the State or those who may be desirous of pursuing their course in a particular State for whatever reason. In this eventuality it is for the candidate to decide which State he wants to opt for and if he claims a benefit of residence in any other State he/she be debarred from claiming admission in any other State. We view the omission made by the UT, Chandigarh with suspicion for this very reason. A person who has resided in Chandigarh, studied in Chandigarh is denied any benefit in the college/school at Chandigarh on account of his residential status while exposing him to unfair competition and opening seats to what we may term as poaching.

Therefore, the end result of deliberations can be summed up that according to Pradeep Jain's case (supra), the State is enabled to provide a preference for the residents but to take a decision in this regard is entirely within the domain of the State or UT Chandigarh being a policy matter. As noticed above, we have held condition no.2 to be having a trace of arbitrariness to it but we cannot enforce a mandate upon the UT, Chandigarh to incorporate the element of benefit of residence to the inhabitants of UT, Chandigarh.

We would thus conclude by holding i) condition no.2 as arbitrary but refrain from issuing any mandate to the UT, Chandigarh for the present academic session except to bind them to a consideration for the next course as earlier observed. We have adopted this course for the reason that

impossible to turn the clock back now for which the petitioners themselves are to be partially blamed as they were alive to the situation when they applied but approached this Court belatedly. However, this can't be termed fatal to their cause because it is only after the admission is worked out would they know the impact of the clause. ii) the candidates who have sought the benefit of residence in any other State would be debarred from claiming seats in any other States/ UT, Chandigarh. The admitting authorities will, therefore, scrutinize the cases of all the incumbents whosoever has opted and claimed the benefit of residence in any other State would not be entitled to admission in UT, Chandigarh. Needless to say that All India rank in NEET shall be kept intact in considering the claims of those desirous of seeking admission to UT, Chandigarh.

Writ petitions stand disposed of in above terms.

(Mahesh Grover)
Judge

31.08.2018
rekha

(Mahabir Singh Sindhu)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No