

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

Sr. No.205+206

CWP-16886-2019 (O&M)
Date of decision : 17.07.2019

Sejal Garg

..... Petitioner

VERSUS

State of Punjab and others

..... Respondents

CWP-17072-2019 (O&M)

Harnoor Kaur Randhawa

..... Petitioner

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. I.P.S Kohli, Advocate, for the petitioner.

Mr. Sahil Sharma, DAG, Punjab.

Mr. Anupam Gupta, Sr. Advocate with
Ms. Gurneet Sagoo, Advocate,
Ms. Harmanjeet Kaur, Advocate
Mr. Digvijay Singh, Advocate
Mr. Gautam Pathania, Advocate
Mr. Sukhpal Singh, Advocate and
Mr. K.S. Sandhu, Advocate, for respondent No.3.

Mr. D.K. Bhatti, Advocate, for respondents No.4 and 5
in CWP-17072 of 2019.

SUDHIR MITTAL, J.

This judgment shall dispose of aforementioned writ petitions as identical issues have been raised therein. Facts are being extracted from CWP-16886-2019 titled as 'Sejal Garg Vs. State of Punjab and others'.

2. The petitioner did her schooling from a school situated in Ludhiana and cleared her senior secondary examination in the academic session 2018-19. She has passed her secondary school examination also from the same school. Aspiring to serve as a Doctor in the State of Punjab, she applied for National Eligibility cum Entrance Test (UG)-2019 (for short 'NEET 2019') as a candidate belonging to the State of Punjab and took the test scheduled for 5.5.2019. The result was declared on 5.6.2019 and the petitioner secured All India Rank of 15494 obtaining 572 marks out of 720. On 6.6.2019, the State of Punjab issued notification on the subject of admission to MBBS/BDS courses in medical and dental institutions in the State of Punjab for the academic session 2019. As per this notification, centralized counseling was to be conducted by respondent No.3-Baba Farid University of Health Sciences. In similar notifications issued in the year 2017 and 2018, it had been mentioned that from the academic session 2019-20 onwards, a candidate would be eligible for admission, if he/she had passed his/her 10th class examination as well as 10+1 and 10+2 examinations from the State of Punjab apart from other eligibility conditions. However, in the Notification dated 6.6.2019, the requirement of passing 10th class examination and 10+1 and 10+2 examination from the State of Punjab, was not mentioned. Thus, a student who had not done his/her secondary and senior secondary education from the State of Punjab could also apply for the State quota in medical/dental colleges in the State of Punjab provided he was a bona fide resident of the said State. Neighbouring States of Himachal Pradesh, Rajasthan and some other States in India like

Madhya Pradesh and Karnataka do not permit students from other States to apply for Medical/Dental colleges in their State and thus, students belonging to the State of Punjab are being subjected to unfair and excessive competition. This, according to the petitioner, is illegal and unconstitutional.

3. The State of Punjab has filed its reply according to which there is no illegality in the Notification dated 6.6.2019. Before issuing the said notification, discussions were held amongst representatives of respondent-University, representatives of parents/guardians of aspiring students and functionaries of the State Government at the highest level. The discussions threw up issues regarding children whose parents/guardians belonged to the State of Punjab, but had to reside outside on account of their job requirements and children whose parents/guardians were bona fide residents of State of Punjab, but had done their schooling from schools situated in other States due to better educational facilities therein. It was felt that such children were ineligible for admission in the State of Punjab in view of the existing eligibility conditions, even though, their parents/guardians belonged to the State of Punjab. Thus, a need was felt to change the policy to benefit such children. The requirement of passing the secondary/senior secondary examination from a school situated in the State of Punjab was done away with it. Before taking this policy decision, the policies of other States were also studied and an informed decision was taken. The said action has been taken keeping in view the interests of the residents of the State of Punjab and nobody who was earlier eligible for the State quota seats

has been debarred. In fact, the scope for admitting more meritorious candidates has been increased.

4. Thus, the limited question to be decided in this case is whether there is any illegality in the decision of the State of Punjab to do away with the eligibility criterion of passing the secondary and senior secondary examination from the State of Punjab? If yes, whether the State of Punjab can be directed to include such an eligibility condition in the notification issued for admission to MBBS/BDS courses ?

5. For deciding the aforementioned controversy, it is necessary to take into consideration certain eligibility conditions prescribed in the notification issued in the year 2018 and 2019 as well as the notification of the State of Punjab laying down the requirements for being considered a bona fide resident of the State of Punjab.

(a) Notification dated 6.2.2018 issued for the academic session 2018-19:-

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‘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.1/2/96-3PP-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. Candidates must have passed 10+1 and 10+2 examination from Punjab. Candidates 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-6009-2014 and connected cases by the Hon'ble Punjab and Haryana High Court, the eligibility criteria from academic session 2019-20 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.’

The following categories shall be exempted from above conditions:-

- i) Children/wards/dependents (whose parents are not alive) of all those regular Punjab Government employees, members of All India Services borne on Punjab cadre, Serving Judges and the employees of the Hon'ble Punjab and Haryana High Court, employees of Boards/Corporations/Statutory Bodies established by an Act of the State of Punjab who have been holding posts outside Punjab on or before 1st January of the year of passing 10+2 examination and their children/wards/dependants have passed class XI and/or XII examinations from outside Punjab.
- ii) Children/wards/dependents (whose parents are not alive) of all those regular Central Government employees, employees of Boards/Corporations/Statutory Bodies of the Central Government who have remained posted inside Punjab for at least two years out of the three years preceding year of passing 10+2 examination but were posted outside Punjab for some time during these three years due to which their children/wards/dependants have passed class XI and/or XII or equivalent qualifying examinations from outside Punjab. However those who remained posted in Punjab continuously for these three years shall not be entitled to be exempted as they are equally placed with other Punjab Government employees posted in Punjab.
- iii) Children/wards/dependents (whose parents are not alive) of all those Punjab Government pensioners who have retired on or before 1st January of the year of passing 10+2 examination and have settled outside Punjab on or before 1st January of the year of passing 10+2 examination and their children/wards/dependants have passed class XII examination from outside Punjab.
- iv) Children/wards/dependents (whose parents are not alive) of those military/para military forces personnel who are born or belong

to the State of Punjab as per their service record at the time of entry into service.

- v) Children/wards/dependents (whose parents are not alive) of those military/para military forces who are born or belong to State of Punjab as per their service record at the time of entry into the service and have retired on or after 1st January of the year preceding two years of the year of passing 10+2 examination.
- vi) Candidates belonging to minority community who are competing for the minority quota in the minority institutions.
- vii) Candidates seeking admission under NRI category.
- viii) Wards of defence personnel posted in Punjab.

Provided however, that in case adequate number of candidates are not available for BDS course, then other States' candidates may be considered as per NEET merit.'

(b) Notification dated 6.6.2019 issued for the academic session 2019-20

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'9. Out of the total seats in Government institutes 15% seats (All India Quota) in MBBS/BDS courses shall be filled by the Government or India through Centralized counseling by Central Board of Secondary Examination on the basis of marks obtained in NEET. Rest 85% seats shall be filled by the Admission Committee constituted by the Government of Punjab, as per merit of NEET.'

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'11. The candidates 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 and any further instructions issued by the Department of Personnel, if any, and the same shall be adhered to. A copy of notification No.1/3/95-3 PP II/9619, dated 6th June, 1996 is enclosed herewith.

In addition the following categories of candidates are also eligible for admission in MBBS and BDS courses in Medical and Dental institutes in Punjab:-

- a) Wards of defence personnel posted in Punjab.

- b) Candidates seeking admissions under NRI category
- c) Candidates belonging to minority community who are competing for the minority quota in the minority institutions
- d) Children/wards/dependents (whose parents are not alive) of all those regular Central Government employees, employees of Boards/Corporations/Statutory bodies of the Central Government who have remained posted inside Punjab for at least two years out of the three years preceding year of passing 10+2 examination but were posted outside Punjab for some time during these three years due to which their Children/wards/dependents have passed class XI and/or XII or equivalent qualifying examinations from outside Punjab. However, those who remained posted in Punjab continuously for these three years shall not be entitled to be exempted as they are equally placed with other Punjab Government employees posted in Punjab.

Provided however, that in case adequate number of candidates are not available for BDS course, then other States candidates may be considered as per NEET merit.’

(c) Instructions dated 6.6.1996 listing out categories who would fall under the definition of bona fide resident of State of Punjab (for short ‘1996 policy’)

Categories

i	Candidates who have studied for a period of five years in Punjab or have studied in Punjab for two years just preceding the qualifying examination for the admission	Certificate to be issued by the Headmaster/Principal of the Government and recognized schools/colleges concerned
ii	Children wards of	Certificate to be issued by respective head of the Department
a	The employees of Punjab Government posted in or outside Punjab State or working on deputation	-do-

	having at least three years of service	
b	The employee of Government of India posted in Chandigarh or in Punjab in connection with the affairs of the Punjab Government for a period of three years	-do-
c	The employees of State Government institutions/undertakings who are posted in or in Punjab in connection with the affairs of the Punjab Government for a period of three years	-do-
d	The employees having at least three years of service in autonomous bodies/companies in which Punjab Government has 20% or more shares	-do-
e	The residents who are residing outside Punjab on account of their service either with the GOI or with the employees of the Government of Punjab in the matter of issue of residence certificate provided the permanent address of such employees fall in the reorganized Punjab i.e. on or after 1.11.66 as per their service	

	books	
f	The employees borne on the establishment of Punjab and Haryana High Court discharging duties in connection with the affairs of the State of Punjab having at least three years service who have not availed the facility from their parent State and State of Haryana, UT Chandigarh	Certificate to be issued by the Head of the Department of Punjab and Haryana High Court, Chandigarh
iii	Children/wards of the pensioners of Punjab Government irrespective of the fact that the original home of the retiree is in a State other than Punjab or He has settled after retirement in or outside Punjab	PPO issued by the Accountant General Punjab
iv	Children/wards of persons who have settled in Punjab or had resided in Punjab for a period of at least five years at any time prior to the date of submission of the application either in pursuant of a profession or holding of a job	Certificate to be issued by the DC, ADC (R), ADC (D), SDM, GA to DC DORG, DRO, EM, Tehsildar, Commissioners of Municipal Corporations of Amritsar, Jalandhar and Ludhiana.
v	Children/wards of persons who have held immovable property in Punjab for a period of five years, the property should be in the name of the	DC, ADC (R), ADC (D), SDM, GA to DC, EM DORG, Tehsildar/DRO, based on copies of jamabandi, revenue record, municipal record,

	parents/guardians or the candidate himself	registered deeds or any other documents to the full satisfaction of the DC. As per category for iv above.
vi	Persons who were born in Punjab and produced a certificate to that effect	

6. The contentions of learned counsel for the petitioner are; (a) the admission process to Medical/Dental colleges for the academic year 2019-20 started with the issuance of notification inviting application for NEET 2019 examination. The examination was held on 5.5.2019 and the result was declared on 5.6.2019. Till then, the students were under the impression that candidates, who had passed their 10th class examination as well as 10+1 and 10+2 examinations from the State of Punjab alone, would be eligible for admission against the State quota in Medical/Dental colleges in the State of Punjab. Notification dated 6.6.2019, did not include such an eligibility condition and thus, the rules of the game have been changed after commencement of the admission process. This is impermissible in law; (b) The eligibility criteria prescribed in the Notification dated 6.6.2019, permit students from the neighbouring States to apply in the State of Punjab, whereas no such benefit is available to students of the State of Punjab. Thus, students belonging to the State of Punjab are being subjected to unfair competition; (c) In a similar matter pertaining to the Union Territory of Chandigarh i.e. CWP-30432-2018 titled as **‘Bodhadeep Pal and others Vs. Union Territory of Chandigarh and others’** decided on 4.7.2019,

Union Territory of Chandigarh has been directed to consider only those students, who have passed 10th class examination as well as 10+1 and 10+2 class examinations from a school situated in Chandigarh, for the State quota seats. A similar direction should be given in the present case also; (d) The notifications issued in the year 2017 as well as in the year 2018 mentioned that starting from academic session 2019-20, stipulation of passing 10th class examination as well as 10+1 and 10+2 class examinations from the State of Punjab would be included. This gave rise to legitimate expectation in the mind of students and non-inclusion of stipulation in Notification dated 6.6.2019, is illegal; (e) Amongst the categories prescribed in the 1996 policy, there is included a category of students who have passed their 10+1 and 10+2 class examinations from the State of Punjab. They thus, qualify to be bona fide residents of the State of Punjab. This permits students residing in the neighbouring States to take admission in dummy schools situated in the State of Punjab and claim admission in the Medical/Dental institutions in the State of Punjab on the basis of 'bona fide residence.' Such a benefit is not available to the students of the State of Punjab, as in the neighbouring States, there is requirement of residence for a long period of time or ownership of immovable property to qualify as a 'bona fide resident'. Students from the State of Punjab have thus, been placed in a disadvantageous position; and (f) A student who applied for the NEET 2019 examination from a particular State cannot be permitted to seek admission in State quota seats in any other State. In the present case, a large number of students have applied in other States like Rajasthan, Uttar Pradesh,

Himachal Pradesh and Haryana apart from the State of Punjab. In the other State, on account of larger number of candidates having applied, they are lower in order of merit, whereas in Punjab their merit ranking is quite high. The respondent-University has failed to weed out such candidates and its inaction cannot be countenanced. Learned counsel for the petitioner has relied upon a judgment of the Apex Court in **'Dr. Pradeep Jain, Vs. Union of India 1984 (3) SCC 654'**. Reliance has also been placed upon a single Bench judgment of this Court in CWP-6006-2014 titled as **'Annie Singh and others Vs. State of Punjab and others (and other connected cases)'** decided on 2.7.2014.

7. For the respondents, arguments have been addressed by Mr. Anupam Gupta, Sr. Advocate, representing respondent No.3-Baba Farid University of Health Sciences. He argues that providing for eligibility condition of passing 10th class examination as well as 10+1 and 10+2 class examinations from the State of Punjab, is a case of granting institutional preference and the eligibility condition of being a bona fide resident of the State of Punjab is a case of granting residential preference. Thus, classification is being made by providing institutional /residential preference. The Constitution of India (for short 'the Constitution') prohibits discrimination of any kind. The concept of equality reigns supreme throughout the Constitution, be it equality for the purposes of admission to educational institutions or be it equality in public employment. Every citizen has to be considered equal before the law and has to be granted equal protection of law. Thus, admissions to Medical/Dental institutions have to be governed by the concept of

equality and a person belonging to the State of Assam or the State of Tamil Nadu should also be eligible in the State of Punjab. However, keeping in view the expanded definition of 'equality' institutional/residential preference is permissible for benefiting residents of a State, although the same results in curtailing merit. Whether such a course is to be adopted or not, is within the domain of the State Government and no mandamus can be issued to direct a State Government to adopt a particular course in this matter. Promoting excellence in medical education is the goal of the State and keeping in view this goal, no institutional/residential preference is provided in post graduate medical courses. The decision not to provide the stipulation of passing 10th class examination and 10+1 and 10+2 class examinations from the State of Punjab was a decision which the policy makers of the State of Punjab, were competent to take and no positive direction can be issued to them to include such an eligibility condition. Moreover, the principle of (i) no change in the rules of the game after the game has begun and (ii) doctrine of legitimate expectation are not attracted in the facts and circumstances of the case. The writ petitions are mis-conceived and deserve to be dismissed.

8. At this stage, it would be appropriate to refer to the law laid down by the Supreme Court of India regarding institutional/residential preference in admission to Medical/Dental Educational institutions keeping in view the Constitutional provisions.

9. In 'Dr. Jagadish Saran Vs. Union of India, 1980 (2) SCC 776', the Supreme Court was seized of a matter in which the petitioner,

was a medical graduate from the Madras University and had been denied admission in the post graduate course in Delhi University on account of reservation of 70% of seats for candidates, who had passed their MBBS examination from the Delhi University. While examining this issue, V.R. Krishna Iyer J. in para 33 of the judgment held as follows:-

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‘33. Even so, what is fundamental is equality, not classification. What is basic is equal opportunity, for each according to his ability, not artificial compartmentalisation and institutional apartheidisation, using the mask of handicaps. We cannot contemplate as consistent with [Art. 14](#) a clanish exclusivism based upon a particular university, without more. Alive to these major premises let us examine the merits of the charge of 'admission' discrimination in the present case, Justice Brennan, in a different social milieu, but with a spiritual secular meaning which may not be lost on us, stated:

Lincon said this Nation was 'conceived in liberty and dedicated to the proposition that all men are created equal'. The Founders' dream of a society where all men are free and equal has not been easy to realize. The degree of liberty and equality that exists today has been the product of unceasing struggle and sacrifice. Much remains to be done-so much that the very institutions of our society have come under challenge. Hence, today, as in Lincoln's time, a man may ask 'whether (this) nation or any nation so conceived and so dedicated can long endure'. It cannot endure if the Nation falls short on the guarantees of liberty, justice, and equality embodied in our founding documents. But it also cannot endure if our precious heritage of ordered liberty be allowed to be ripped apart amid the sound and fury of our time. It cannot endure if in individual cases the claims of social peace and order on the one side and of personal liberty on the other cannot be mutually resolved in the forum designated by the Constitution. If that resolution cannot be reached by judicial trial in a court of law, it will be reached

elsewhere and by other means, and there will be grave danger that liberty, equality, and the order essential to both will be lost."

Another national risk we run was sounded in words of caution in Khosa's case by Chandrachud, J. as he then was):

Let us not evolve, through imperceptible extensions, a theory of classification which may subvert, perhaps submerge, the precious guarantee of equality. The eminent spirit of an ideal society is equality and so we must not be left to ask in wonderment: what after all is the operation residue of equality and equal opportunity?"

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Ultimately, the institutional preference was upheld by bringing in the concept of discrimination, but directions were issued to the University to review the quantum of reservation keeping in view the concept of equality of opportunity and other relevant Constitutional criteria indicated in the judgment.

10. In **'Dr. Pradeep Jain's case (supra)**, the question raised therein was whether admission to a Medical College or an institution of higher level situated in a State can be confined to those who have their 'domicil' within the State keeping in view the Constitutional values. It was held as under:-

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'5. We may point out at this stage that though [Article 15 \(2\)](#) clauses (1) and (2) bars discrimination on grounds not only of religion, race, caste or sex but also of place of birth, [Article 16 \(2\)](#) goes further and provides that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in state employment.

So far as employment under the state, or any local or other authority is concerned, no citizen can be given preference nor can any discrimination be practised against him on the ground only of residence. It would thus appear that residential requirement would be unconstitutional as a condition of eligibility for employment or appointment to an office under the State and having regard to the expansive meaning given to the word 'State' in [Ramana Dayaram Shetty v. International Airport Authority of India & Ors.](#), it is obvious that this constitutional prohibition would also cover an office under any local or other authority within the State or any corporation, such as a public sector corporation which is an instrumentality or agency of the State. But [Article 16 \(3\)](#) provides an exception to this rule by laying down that Parliament may make a law "prescribing, in regard to a class or classes of employment or appointment to an office under the government of, or any local or other authority, in a state or union territory, any requirement as to residence within that state or union territory prior to such employment." or appointment Parliament alone is given the right to enact an exception to the ban on discrimination based on residence and that too only with respect to positions within the employment of a State Government. But even so, without any parliamentary enactment permitting them to do so, many of the State Governments have been pursuing policies of localism since long and these policies are now quite wide spread. Parliament has in fact exercised little control over these policies States. The only action which Parliament has taken under [Article 16 \(3\)](#) giving it the right to set residence requirements has been the enactment of the Public Employment (Requirement as to [Residence](#)) Act, 1957 aimed at abolishing all existing residence requirements in the States and enacting exceptions only in the case of the special instances of Andhra Pradesh, Manipur, Tripura and Himchal Pradesh. There is therefore at present no parliamentary enactment permitting preferential policies based on residence requirement except in the case of Andhra Pradesh, Manipur Tripura and Himachal Pradesh where the Central Government has been given the right to issue directions setting residence requirements in the subordinate services. Yet, in the face of [Article 16 \(2\)](#), some of the States are adopting 'sons of the soil'

policies prescribing reservation or preference based on domicile or residence requirement for employment or appointment to an office under the government of a State or any local or other authority or public sector corporation or any other corporation which is an instrumentality or agency of the State. Prima facie this would seem to be constitutionally impermissible though we do not wish to express any definite opinion upon it, since it does not directly arise for consideration in these writ petitions and civil appeal.'

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'8. Now it is clear on a reading of the Constitution that it recognises only one domicile namely, domicile in India. [Article 5](#) of the Constitution is clear and explicit on this point and it refers only to one domicile, namely, "domicile in the territory of India." Moreover, it must be remembered that India is not a federal state in the traditional sense of that term. It is not a compact of sovereign states which have come together to form a federation by ceding a part of their sovereignty to the federal states. It has undoubtedly certain federal features but it is still not a federal state and it has only one citizenship, namely, the citizenship of India. It has also one single unified legal system which extends throughout the country. It is not possible to say that a distinct and separate system of law prevails in each State forming part of the Union of India. The legal system which prevails through-out the territory of India is one single indivisible system with a single unified justicing system having the Supreme Court of India at the apex of the hierarchy, which lays down the law for the entire country. It is true that with respect to subjects set out in List II of the Seventh Schedule to the Constitution, the States have the power to make laws and subject to the over-riding power of Parliament, the States can also make laws with respect to subjects enumerated in List III of the Seventh Schedule to the Constitution, but the legal system under the rubric of which such laws are made by the States is a single legal system which may truly be described as the Indian Legal system. It would be absurd to suggest that the legal system varies from State to State or that the legal system of a State is different from the legal system of the Union of India; merely because with respect to the subjects within their legislative competence, the States have power to make

laws. The concept of 'domicile' has no relevance to the applicability of municipal laws, whether made by the Union of India or by the States. It would not, therefore, in our opinion be right to say that a citizen of India is domiciled in one state or another forming part of the Union of India. The domicile which he has is only one domicile, namely, domicile in the territory of India. When a person who is permanently resident in one State goes to another State with intention to reside there permanently or indefinitely, his domicile does not undergo any change: he does not acquire a new domicile of choice. His domicile remains the same, namely, Indian domicile. We think it highly detrimental to the concept of unity and integrity of India to think in terms of State domicile. It is true and there we agree with the argument advanced on behalf of the State Governments, that the word 'domicile' in the Rules of some of the State Governments prescribing domiciliary requirement for admission to medical colleges situate within their territories, is used not in its technical legal sense but in a popular sense as meaning residence and is intended to convey the idea of intention to reside permanently or indefinitely. That is, in fact the sense in which the word 'domicile' was understood by a five Judge Bench of this Court in D. P. Joshi's case (supra) while construing a Rule prescribing capitation fee for admission to a medical college in the State of Madhya Bharat and it was in the same sense that word 'domicile' was understood in Rule 3 of the Selection Rules made by the State of Mysore in Vasundra v. State of Mysore. We would also, therefore, interpret the word 'domicile' used in the Rules regulating admissions to medical colleges framed by some of the States in the same loose sense of permanent residence and not in the technical sense in which it is used in private international law. But even so we wish to warn against the use of the word 'domicile' with reference to States forming part of the Union of India, because it is a word which is 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. We think it is dangerous to use a legal concept for conveying a sense different from that which is ordinarily associated with it as a result of legal usage over the years. When we use a word which has come to represent a concept or idea, for

conveying a different concept or idea it is easy for the mind to slide into an assumption that the verbal identity is accompanied in all its sequences by identity of meaning. 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. We would, therefore, strongly urge upon the 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.'

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'10. If every citizen is afforded equal opportunity, genetically and environmentally, to develop his potential he will be able in his own way to manifest his faculties fully leading to all round improvement in excellence. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizen in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set up.'

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'14. There are, in the application of this principle, two considerations which appear to have weighed with the Court in justifying departure from the principle of selection based on merit. One is what may be called State interest and the other is what may be described as a region's claim of backwardness. The legitimacy of claim of State interest was recognised explicitly in one of the early decisions of this Court in D.P. Joshi's case (supra) The Rule impugned in this case was a Rule made by the State of Madhya Bharat for admission to the Mahatma Gandhi Memorial Medical College, Indore providing that no capitation fee should be charged for students who are bona fide residents of Madhya Bharat but for

other non-Madhya Bharat students, there should be a capitation fee of Rs. 1300 for nominees and Rs. 1500 for others. The expression 'bona fide resident' was defined for the purpose of this Rule to mean inter alia a citizen whose original domicile was in Madhya Bharat provided he had not acquired a domicile elsewhere or a citizen whose original domicile was not in Madhya Bharat but who had acquired a domicile in Madhya Bharat and had resided there for not less than five years at the date of the application for admission. The constitutional validity of this Rule was challenged on the ground that it discriminated between students who were bona fide residents of Madhya Bharat and students who were not and since this discrimination was based on residence in the State of Madhya Bharat, it was violative of [Article 14](#) of the Constitution. The Court by a majority of four against one held that the Rule was not discriminatory as being in contravention of [Article 14](#), because the classification between students who were bona fide residents of Madhya Bharat and those who were not was based on an intelligible differentia having rational relation to the object of the Rule. Venkatarama Ayyar, J. speaking on behalf of the majority observed:

"The object of the classification underlying the impugned rule was clearly to help to some extent students who are residents of Madhya Bharat in the prosecution of their studies, and it cannot be disputed that it is quite a legitimate and laudable objective for a State to encourage education within its borders. Education is a State subject, and one of the directive principles declared in Part IV of the Constitution is that the State should make effective provisions for education within the limits of its economy. (Vide [Article 41](#)). The State has to contribute for the up keep and the running of its educational institutions. We are in this petition concerned with a Medical College, and it is well known that it requires considerable finance to maintain such an institution. If the State has to spend money on it, is it unreasonable that it should so order the educational system that the advantage of it would to some extent at least enure for the benefit of the State? A concession given to the residents of the State in the matter of fees is obviously calculated to serve that end, as presumably some of them might, after passing out of the

College, settle down as doctors and serve the needs of the locality. The classification is thus based on a ground which has a reasonable relation to the subject-matter of the legislation, and is in consequence not open to attack. It has been held in [The State of Punjab v. Ajab Singh and Anr.](#) that a classification might validly be made on a geographical basis. Such a classification would be eminently just and reasonable, where it relates to education which is the concern, primarily of the State. The contention, therefore, that the rule imposing capitation fee is in contravention of [Article 14](#) must be rejected." (emphasis supplied)

It may be noted that here discrimination was based on residence within the State of Madhya Bharat and yet it was held justified on the ground that the object of the State in making the Rules was to encourage students who were residents of Madhya Bharat to take up the medical course so that "some of them might, after passing out from the college, settle down as doctors and serve the needs of the locality" and the classification made by the Rule had rational relation to this object. This justification of the discrimination based on residence obviously rest on the assumption that those who were bona fide residents of Madhya Bharat would after becoming doctors settle down and serve the needs of the people in the State. We are not sure whether any facts were pleaded in the affidavits justifying this assumption but the judgment of Venkatarama Ayyar, J. shows that the decision of the majority Judges proceeded on this assumption and that was regarded as a valid ground justifying the discrimination made by the impugned Rule.'

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'19. It is of course true that the Medical Education Review Committee established by the Government of India has in its report recommended after taking into account all relevant considerations, that the "final objective should be to ensure that all admissions to the MBBS course should be open to candidates on an All India basis without the imposition of existing domiciliary condition," but having regard to the practical difficulties of transition to the stage where admissions to MBBS course in all medical colleges would be on All India Basis, the medical Education Review Committee has suggested

"that to begin with not less than 25 per cent seats in each institution may be open to candidates on all India basis."

‘..... We are therefore of the view that a certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalise opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or pre-medical examination of the same university or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the State and for this purpose, there should be no distinction between schools affiliated to State Board and schools affiliated to the Central Board of Secondary Education.’,

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The matter was ultimately disposed of with direction that admissions to post graduate medical courses should not provide any reservation based on residential or institutional preference, but reservation not exceeding 50% can be made in under graduate courses on the said basis.

11. In ‘**Anant Madaan Vs. State of Haryana 1995 (2) SCC 135**’, a similar issue arose in a Haryana case. In 1994, departing from earlier norms, an eligibility condition of passing 10th, 10+1 and 10+2 classes as a regular candidate from a recognized institution in Haryana, was challenged. It was held as under:-

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“8. In view of the above facts, we have to consider whether the condition requiring a candidate to have studied in 10th, 10+1 and 10+2 classes in a recognised institution in the State of Haryana, can be considered as arbitrary or unreasonable. It is by now well settled

that preference in admissions on the basis of residence, as well as institutional preference is permissible so long as there is no total reservation on the basis of residential or institutional preference. As far back as in 1955, in the case of [D.R Joshi v. State of Madhya Bharat](#), this Court making a distinction between the place of birth and residence, upheld a preference on the basis of residence in educational institutions.”

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The Supreme Court upheld the eligibility condition and dismissed the appeal preferred against the judgment of this Court by holding that institutional preference was permissible.

12. In **‘Ajit Singh and others (II) Vs. State of Punjab and others, 1999 (7) SCC 209’**, seniority inter-se reserved candidates and general candidates was in question. The Supreme Court dealt with the limited question relating to seniority of reserved candidates, promoted as the roster points. While dealing with this issue, the issue of fundamental right to reservations, was also considered and it was held as under:-

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“28. We next come to the question whether [Article 16\(4\)](#) and [Article 16\(4A\)](#) guaranteed any fundamental right to reservation. It should be noted that both these Articles open with a non-obstante clause - "Nothing in this Article shall prevent the State from making any provision for reservation.....". There is a marked difference in the language employed in [Article 16\(1\)](#) on the one hand and [Article 16\(4\)](#) and [Article 16\(4A\)](#). There is no directive or command in [Article 16\(4\)](#) or [Article 16\(4A\)](#) as in [Article 16\(1\)](#). On the face of it, the above language in each of Articles 16(4) and 16(4A), is in the nature of an enabling provision and it has been so held in judgments rendered by Constitution Benches and in other cases right from 1963.”

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“31. Unfortunately, all these rulings of larger Benches were not brought to the notice of the Bench which decided Ashok Kumar Gupta and Jagdish Lal and to the Benches which followed these two cases. In view of the overwhelming authority right from 1963, we hold that both Articles 16(4) and 16(4A) do not confer any fundamental rights nor do they impose any constitutional duties but are only in the nature of enabling provision vesting a discretion in the State to consider providing reservation if the circumstances mentioned in those Articles so warranted. We accordingly hold that on this aspect Ashok Kumar Gupta, Jagdishlal and the cases which followed these cases do not lay down the law correctly.”

Power is coupled with duty:

“32. Learned senior counsel for the reserved candidates, Sri K.Parasaran however contended that [Article 16\(4\)](#) and [Article 16\(4A\)](#) confer a power coupled with a duty and that it would be permissible to enforce such a duty by issuing a writ of mandamus. Reliance for that purpose was placed upon [Comptroller and Auditor General of India, Gian Prakash vs. K.S.Jagannathan](#) and also on Julius vs. Lord Bishop which case was followed by this Court in [Commissioner of Police vs. Gordhandas Bhanji](#) . We are unable to agree with the above contention. As pointed out earlier, the Constitution Bench of this Court in C.A. Rajendran Vs. Union of India held that [Article 16\(4\)](#) conferred a discretion and did not create any constitutional duty or obligation. In fact, in that case, a mandamus was sought to direct the Government of India to provide for reservation under [Article 16\(4\)](#) in certain Class I and Class II services. The Government stated that in the context of [Article 335](#) and in the interests of efficiency of administration at those levels, it was of the view that there should be no reservation. The said opinion of the Government was accepted by this Court as reasonable and mandamus was refused. Even in M.R. Balaji's case, the Constitution Bench declared that [Article 16\(4\)](#) conferred only a discretion. It is true that in Jagannathan's case, the three Judge Bench issued a mandamus, after referring to [Article 142](#), that the Government must add 25 marks to SC/ST candidates who had taken the S.A.S. Examination for promotion as Sections Officers and also that, in future, a reduced minimum marks must be provided and announced

before the examination. The Court also observed that the Department had not passed orders as per a general O.M. of the Government dated 21.9.1977. But the attention of the Court was not drawn to the judgment of the Constitution Bench in C.A. Rajendran's case and other cases to which we have referred earlier. Further, if the State is of the opinion that in the interests of efficiency of administration, reservation or relaxation in marks is not appropriate, then it will not be permissible for the Court to issue a mandamus to provide for reservation or relaxation. We also note that in Superintending Engineer, Public Health Vs. Kuldeep Singh, Jagannathan's case was followed and reference was made to [Article 16\(4\)](#) and [Article 16\(4A\)](#) and to the principle that where a power is coupled with a duty as in Julius Vs. Lord Bishop and Commissioner of Police Vs. Gordhandas Bhanji, the same could be enforced by the Court. But we may point out that even in Kuldeep Singh's case, no reference was made to C.A. Rajendran and other cases. We, accordingly, hold that the view in Jagannathan and Kuldeep Singh's cases that a mandamus can be issued either to provide for reservation or for relaxation is not correct and runs counter to judgments of earlier Constitution Benches and, therefore, these two judgments cannot be said to be laying down the correct law.”

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Thus, the ratio of the aforementioned judgment is that a mandamus cannot issue to enforce reservation.

13. Similar view has been taken in **Ajit Singh and others (III) Vs. State of Punjab and others 2000 (1) SCC 430, Union of India Vs. R. Rajeshwaran and another 2003 (9) SCC 294 and Gulshan Parkash (Dr.) and others Vs. State of Haryana and others 2010 (1) SCC 477.**

14. Since we are considering various judgments, we may also refer to the Division Bench judgment in CWP-30432-2018 tilted as **Bodhadeep Pal and others Vs. Union Territory of Chandigarh and others,**

decided on 4.7.2019 by this Bench. In this case, certain candidates had approached this Court through CWP-18240-2018 titled as '**Ashu Hooda Vs. Union Territory, Chandigarh and others**' challenging the criteria of passing 10+2 standard examination alone from a school situated in Union Territory, Chandigarh, mentioned in the prospectus for the academic session 2018-19. This criteria was declared to be arbitrary and the U.T Administration, was directed to frame a fresh criteria within next two months. Thereafter, a fresh criteria was prescribed through Press Release dated 31.10.2018, laying that the requirement of passing 10th, 10+1 and 10+2 from Schools/Colleges recognized by the Chandigarh Administration and situated in the Union Territory, Chandigarh, shall be made applicable from the academic session 2021-22. Meanwhile, for the academic session 2019-20, the criteria would passing of 10+2 only from a School/College situated in Union Territory, Chandigarh and in the academic year 2020-21, the requirement would be of passing 10+1 and 10+2 from the School/College situated in Union Territory, Chandigarh. Apart from such, candidates, those whose parents had been residing in Chandigarh for five years immediately preceding the date of application, were also eligible, even though, they did not satisfy the institutional preference criteria. Further, candidates whose parents were employed by the Central/State Government and were on deputation to the UT Administration and employees of the Chandigarh Administration/Autonomous Bodies/Companies, in which Chandigarh Administration, has 25% or more share, were also eligible to apply, even though, they did not satisfy the criteria of institutional or residential

preference. Thus, the institutional preference was prescribed in a staggered manner. Keeping in view the fact that the judgment in **Ashu Hooda's case (supra)**, became final between the parties and pursuant thereto, institutional preference was provided, but was made fully applicable only with effect from academic session 2021-22, we found the policy decision to be arbitrary and struck down the part of the policy which provided for institutional preference in staggered manner. It may be noted that no mandamus was issued to the UT Administration, to provide institutional preference. The decision was based on the principle of institutional preference being permissible, but the application thereof being arbitrary.

15. We may also examine the judgment of a single Bench of this Court in **'Annie Singh's case (supra)** on which heavy reliance has been placed by learned counsel for the petitioner. In that case, the petitioners had challenged the imposition of the eligibility criterion of passing 10th class examination also from the State of Punjab apart from the criterion of passing 10+2 class examination. Public notice had been issued by the Central Board of Secondary Education (CBSE) inviting applications upto 31.12.2013 for NEET. Notification prescribing the condition of passing 10th class was issued by the State of Punjab on 7.3.2014. Consequently, it was argued that rules of the game had been changed after the game had started and a Division Bench judgment of this Court in **'Harleen Cheema Vs. State of Punjab and others, 2014 (1) SCT 185'**, laying down that students who had done their schooling in Chandigarh were also eligible for seeking admission against State quota seats in Punjab. Chandigarh

being the capital of the State of Punjab, was sought to be bypassed. The respondents therein were put on notice and interim orders were issued, staying the Notification dated 7.3.2014. Admissions were made meanwhile, and the State did not strongly object to the regularization thereof. The writ petition was ultimately disposed of with directions to the State of Punjab to frame fresh criteria keeping in view the observations made in the judgment. It is, thus, obvious that no principle of law was laid down in this judgment. Only a direction was given to State of Punjab, to frame an appropriate policy.

16. On an examination of the law laid down in the aforementioned judgments, it is eminently clear that providing institutional preference while making admissions to MBBS/BDS courses, is permissible in view of the dynamic concept of equality for safeguarding the interests of the backward or under-privileged sections of society so as to raise their level to that of the privileged citizens of the country. By extension of the said principle, States are permitted to safeguard the interests of the residents of their State by providing institutional preference. However, the Constitutional scheme is for providing equality to all citizens of the country and to do away with reservations of all kinds. Keeping in view the permissible nature of reservation based on institutional preference, no mandamus can be issued to a State Government to provide the same in case such a preference had not been provided. In fact, in post graduate medical courses, no such preference is provided.

17. That being the law of the land, can we issue a direction to the State of Punjab to impose institutional preference once the State has thought it fit to do away with the same ? The answer is emphatically. 'No'. The institutional preference has been done away with in the interest of residents of the State of Punjab, whose children are studying outside the State on account of the employment compulsions of their parents or who prefer to do their secondary/senior secondary education from a school outside the State on account of excellence of such an institution. The decision is well considered and has been taken after due deliberation as is evident from written statement filed on behalf of the State of Punjab. There is no arbitrariness involved therein and thus, we uphold the same. Framing of a policy governing admissions to under-graduate Medical/Dental courses, is within the competence of the State Government and no mandamus can be issues to direct a State Government to adopt 'permissible reservation', as the same is mandated by the Constitution.

18. The related question which arises is whether the issuance of Notification dated 6.6.2019, amounts to changing the rules of the game after the game has begun ? The answer again is an emphatic 'No'. The admission process in the State of Punjab has commenced with the issuance of Notification dated 6.6.2019. The NEET 2019 examination being held on 5.5.2019 and the result thereof being declared on 5.6.2019, does not imply that the admission process commenced with the issuance of notification inviting applications for NEET 2019. The said notification was issued by the CBSE being the centralized agency for conducting

national tests and issuance of the said notification did not commence admission process in the State of Punjab. The said process in the State of Punjab commenced with the impugned notification and thus, the principle as of change of rules of the game mid-stream, is not attracted.

19. It may be noted that there is no challenge in this petition to the 1996 Policy and therefore, even if certain stipulations, mentioned therein, permit students of neighbouring States, to apply for the State quota in the State of Punjab, so be it. The concept of universal equality is propagated by such an action and it would result in more meritorious candidates seeking admission in the State of Punjab.

20. The doctrine of legitimate expectation can also not be invoked by the petitioner. His argument in this regard is that in the Notifications issued by the State in the year 2017 and 2018, it was mentioned that with effect from the academic session 2019-20 institutional preference would be provided. There would be a requirement of passing 10th class examination as well as 10+1 and 10+2 class examinations from the State of Punjab. This gave rise to a legitimate expectation and the State cannot now do away with the stipulation, it had promised to implement.

21. The doctrine of legitimate expectation is an extension of the doctrine of promissory estoppel. A Full Bench of the Bombay High Court in **'Ashwin Prafulla Pimpalwar Vs. State of Maharashtra, 1992 (1) SLR 179'** has held in a case of admission to professional colleges, that promissory estoppel cannot be relied upon in such matters. The said judgment has been followed by a Division Bench of this Court in **'Nupur**

(minor) and others Vs. Panjab University, Chandigarh 1996 (1) RSJ, 576, and it has been held that by invoking the principle of legitimate expectation, an authority cannot be divested of its statutory power. Change of policy cannot be barred by invoking the doctrine as larger public interest is involved. Such principles are ordinarily applicable to the commercial world and cannot be extended to the field of education because education is dynamic in nature and its evolution cannot be stifled. Thus, the reliance by the petitioner on the doctrine of legitimate expectation also deserves to be rejected.

22. Finally, learned counsel for the petitioner has placed reliance on the judgment passed by us in **Bodhadeep Pal's case (supra)** to argue that a similar situation existed in the said case also and we have directed the Union Territory, Chandigarh, to enforce the stipulation of passing 10th class examination as well as 10+1 and 10+2 class examinations from Schools situated in Union Territory, Chandigarh. We need to examine the facts and circumstances of the said case first. As has been pointed out earlier, the said case pertains to Union Territory, Chandigarh, wherein for the academic sessions 2018-2019, the U.T Administration, prescribed eligibility condition of passing 10+2 class examination alone, from a school situated in U.T Chandigarh. This stipulation was challenged in the case of **Ashu Hooda's (supra)**, wherein, a direction was issued by a Division Bench of this Court, to the U.T Chandigarh to frame a fresh policy within two months. Pursuant to such directions, policy dated 31.10.2018, was framed providing for institutional preference in a staggered manner. Accordingly, it was held by us that though the policy

dated 31.10.2018, was framed in compliance of directions issued by this Court, there was no rationale for delaying the institutional preference till 2021-22. Consequently, the implementation of institutional preference in a staggered manner, was held to be arbitrary and was quashed. No mandamus was issued to the U.T Administration, to impose institutional preference. The faulty implementation of institutional preference, was declared illegal. Thus, the said case is distinguishable from the present one. There is no earlier judgment of this Court binding between the parties, pursuant to which the impugned policy decision has been taken and thus, the reliance upon the case of **Bodhadeep Pal** (supra), is mis-conceived.

23. In passing, we may also refer to the argument of the learned counsel for the petitioner that a student, who has applied for the NEET 2019 examination as a candidate of particular State, cannot seek admission in the State quota of any other State. Learned counsel for the petitioner has not laid out any basis for this argument. The NEET 2019 information bulletin does not provide for any such restriction and thus, this argument also deserves to be rejected.

24. The writ petitions have no merit and are accordingly, dismissed.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

17.07.2019

Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes / No
Yes/ No