

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 30432 of 2018

Date of Decision: July 04, 2019

Bodhadeep Pal and others

.....Petitioners

versus

U.T. of Chandigarh and another

.....Respondents

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

Present: Mr. Gurminder Singh, Sr. Advocate with
Mr. J.S. Gill, Advocate
for the petitioners

Mr. Suman Jain, Advocate
for respondent No. 1

Sudhir Mittal, J.

This case aptly reflects the apathy of the Chandigarh Administration in dealing with students desirous of taking admission to the U.T. Chandigarh pool seats in the only Medical College established in U.T. Chandigarh. Frequent changes in the eligibility criteria prescribed for such seats has led to uncertainty in the minds of students and has resulted in continuing litigation. The approach of the Chandigarh Administration is deprecated. The policy makers would be well advised to be more sensitive towards the admission prospects of students residing in U.T. Chandigarh and aspiring to become Doctors. Students are the future of this country and their interests must be protected.

2. There is only one Medical College in U.T. Chandigarh namely Government Medical College and Hospital, Chandigarh. It was established in the year 1992-1993. The total seats available for admission to the MBBS course are split into All India Quota, Central Pool, Foreign Indian Student (NRI) and U.T.

Chandigarh pool. Soon after the College was set up, one of the eligibility criteria prescribed for admission to U.T. Chandigarh pool seats was of passing class X, XI and XII from a school situated in Chandigarh. Thus, a domiciliary concept was included in the eligibility criterion. In the year 2003, this eligibility criterion was modified to the requirement of passing Class XI and XII from a school situated in Chandigarh. Subsequently, in the year 2010 this criterion was further modified and the requirement was restricted to passing of XII class only from a school situated in U.T. Chandigarh. Resultantly, students domiciled in the State of Punjab, Haryana and Himachal Pradesh could seek admission against seats of U.T. Chandigarh pool only by passing Class XII from a school situated in U.T. Chandigarh. This led to heart burning amongst students domiciled in Chandigarh and CWP No. 12155 of 2014 ***Ms. Akanksha Mehra vs. U.T. Chandigarh and others*** was filed challenging the said eligibility criterion. The writ petition was allowed vide judgment dated 16.09.2014, a copy of which has been annexed as Annexure P-2 with the writ petition. A Letters Patent Appeal was filed by the Chandigarh Administration against the said judgment but the same was disposed of as having been rendered infructuous as Akanksha Mehra had meanwhile taken admission in some other Medical College. While disposing of the appeal, the Division Bench noticed that a similar challenge was under consideration before another learned Single Judge and that a Division Bench had upheld the eligibility criteria of passing Class XII examination only from a school situated in Union Territory, Chandigarh in ***Abheyjit Singh vs. Chandigarh Administration*** CWP No. 20636 of 2013 and that the effect of the said judgment would be taken into consideration by the Single Judge seized of the matter. A copy of the judgment dated 24.08.2015 passed by the Division Bench in LPA No. 129 of 2015 has been annexed as Annexure P-3 with the writ petition. The outcome of the matter pending before the learned

Single Judge, referred to in the judgment of the Division Bench, is not clear either from the pleadings of the parties or from their arguments. However, for the Academic Session 2018-2019 the centralized admission prospectus, a copy of which has been annexed as Annexure P-4, once again provided the criteria of passing XII standard examination alone from a school situated in U.T. Chandigarh and from this it can be reasonably assumed that during the intervening period eligibility criteria of passing X, XI and XII class examination from a school situated in U.T. Chandigarh was being followed. The criteria as laid down in the prospectus Annexure P-4, was challenged through CWP No. 18240 of 2018 titled as ***Ashu Hooda vs. Union Territory, Chandigarh and others*** and the same was allowed vide judgment dated 31.08.2018, a copy of which has been placed on record as Annexure P-5. The criteria was declared to be arbitrary and the U.T. Administration was directed to frame a fresh criteria within next two months and to also keep in view the requirement of domicile. Consequently, the department of Public Relations, Chandigarh Administration, issued a press release intimating framing of an eligibility criteria allegedly in accordance with the Division Bench decision in ***Ashu Hooda's case (supra)***. This document has been placed on record through Annexure P-6 and the same is reproduced:-

**“DEPARTMENT OF PUBLIC RELATIONS
CHANDIGARH ADMINISTRATION
Press Release**

Chandigarh, 31st October, 2018 : In pursuance of judgment dated 31.08.2018 passed by the Hon'ble Punjab & Haryana High Court at Chandigarh in CWP No. 18240, 17407, 19851, 21558, 21742 of 2018 (O&M) titled as Ashu Hooda Vs. Union Territory, Chandigarh and others, the Administrator, Union Territory, Chandigarh is pleased to frame the following eligibility criteria for admission to State Quota Seats in MBBS course in Government Medical College & Hospital, Sector-32, Chandigarh:-

1. *Candidates who had completed 10th, 10+1 and 10+2 from schools/colleges recognized by the Chandigarh Administration and situated in the Union Territory of Chandigarh, as regular student of the said school/college. However, this criteria shall be implemented in a staggered manner i.e. in 2019, the eligibility criteria would be only 10+2, in 2020 it will be 10+1 & 10+2 and in 2021 it shall be 10th, 10+1 & 10+2.*

OR

2. *Candidates whose parents are residents of Chandigarh for the past 05 years immediately preceding the date of application even if they do not satisfy the criteria as laid down in condition No. 1 above. The requisite residence certificate issued from the office of Deputy Commissioner will be taken as proof for this purpose.*

OR

3. *Candidates whose parents are employees of Central Government/State Government who are on deputation to U.T. Administration, including government employees of Chandigarh Administration/employees working in autonomous bodies/companies in which Chandigarh Administration has 20% or more share, for the past 03 years immediately preceding the date of application even if they do not satisfy the criteria as laid down in condition No. 1 & 2 above.*

However, candidates of all three categories above will have to submit an undertaking/affidavit that the candidate has not opted and claimed benefit of residence in any other State/UT other than Chandigarh after the declaration of NEET result.

3. The present writ petition challenges the said eligibility criteria as being unreasonable, arbitrary and violative of the Division Bench judgment passed in ***Ashu Hooda's case (supra)***. It may also be noticed that the said judgment is final and binding inter-partes as no appeal has been carried there against.

4. In the reply filed by the U.T. Administration, it has been pleaded that the criterion provided is in accordance with the directions in ***Ashu Hooda's case***

(*supra*). It is stated that the direction was to consider grant of benefit of domicile and to debar candidates who had sought the domiciliary benefit in some other State and that both these directions have been complied with. Further, judgment of the Hon'ble Supreme in ***Dr. Pradeep Jain etc. vs. Union of India and others***, AIR **1984 SC 1420** has also been kept in mind. The interest of wards of officers belonging to the States of Punjab and Haryana working in U.T. Chandigarh on deputation, has also been kept in mind.

5. Thus, the controversy in this case is confined to a very narrow field. A decision of the same involves the interpretation of the judgement in ***Ashu Hooda's case (supra)*** as the said judgment has become final inter-partes and binds the U.T. Administration.

6. Learned senior counsel for the petitioner submits that in ***Ashu Hooda's case (supra)*** it has been clearly and unambiguously held that the requirement of passing XII class only from a school situated in U.T. Chandigarh is arbitrary. It has also been held that for U.T. Chandigarh pool seats, students who have passed X, XI and XII class examinations from schools situated in U.T. Chandigarh must be given preference and benefit of domicile must also be given to the residents of U.T. Chandigarh as is being given by the neighbouring States of Punjab, Haryana and Himachal Pradesh. Despite such an unambiguous direction, the impugned eligibility criterion has maintained the requirement of XII class only being passed from a school situated in U.T. Chandigarh for the Academic Session 2019-2020. Although, the domiciliary aspect has been taken care of, yet students belonging to the neighbouring States, can steal a march over the students residing in U.T. Chandigarh, simply by passing their XII class examination from a school situated in U.T. Chandigarh. This is precisely what the Division Bench has declared to be unjustified and illegal.

7. On the contrary learned counsel for U.T. Administration defends the eligibility criteria. His contention is that the directions of the Division Bench in *Ashu Hooda's case (supra)* have been fully implemented. The requirement of passing XII class examination has been retained for the Academic Session 2019-2020 so as to mitigate the hardship of students who have already taken admission in the said class based on the previous eligibility criteria. The directions are being implemented in a staggered manner so as to minimize the difficulties of the students. Domiciliary requirements have been included and it has been ensured that a candidate, who has opted for a medical institution in some other State, can not apply in U.T. Chandigarh. Thus, there is no illegality in the impugned eligibility criterion.

8. For deciding the controversy, it is necessary to reproduce certain paragraphs from the judgment of *Ashu Hooda's case (supra)* -

“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
	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.

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*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.

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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.

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.

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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 Chandigarh working in the capital city of both the States of Punjab and 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.

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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 31.8.2018 is the last date for concluding admissions and it is well nigh 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.”

9. It is thus evident that providing a preference for students domiciled in a particular State is constitutional. Although this aspect has been addressed partially, a window has been kept open for students from the neighbouring States to seek admission in U.T. Chandigarh only after passing XII class examination from a school situated in U.T. Chandigarh even though ***Ashu Hooda's case (supra)*** clearly holds such a criteria to be arbitrary. This violates the rights of students domiciled in Chandigarh as such students are subjected to an unfair competition from students belonging to the neighbouring States whereas students domiciled in the neighbouring States are not subjected to any such competition from the students of U.T. Chandigarh. Thus, the U.T. Administration has failed in its duty to protect the interest of its own students probably on account of the fact that the Administration is run by officers on deputation from the State of Punjab and Haryana who prevail upon the policy making authorities keeping in view the interests of their own children. Even though, the Administration has been goaded to take an appropriate policy decision keeping in view the well established legal principles enunciated in the aforementioned judgment, it has failed to do so.

10. The impugned policy decision does ensure that students who have applied in other States can not apply to a medical institution in U.T. Chandigarh, however, for the Academic Session 2019-2020 and 2020-2021, it still permits

students who have not studied upto class X in Chandigarh, to take admission in U.T. Chandigarh, exposing the students domiciled in U.T. Chandigarh to additional competition. This, in itself, is unfair to the students domiciled in U.T. Chandigarh, and it is, thus, unfair advantage that has been criticized in the judgment of *Ashu Hooda's case (supra)*. Thus, the vice of arbitrariness still exists in the impugned criterion.

11. Consequently, we find that the second part of paragraph 1 of the impugned eligibility criterion (Annexure P-6), to be arbitrary and, consequently violative of Article 14 of the Constitution of India. The second part of the said paragraph viz. *“However, this criteria shall be implemented in a staggered manner i.e. in 2019, the eligibility criteria would be only 10+2, in 2020 it will be 10+1 & 10+2 and in 2021 it shall be 10th, 10+1 & 10+2.”* is, accordingly, quashed.

12. The writ petition is allowed and the U.T. Administration is directed to make admissions to the MBBS course in its College accordingly.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

July 04, 2019
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No