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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 15.07.2020

Pronounced on : 30.07.2020

+ W.P.(C) 2941/2020

MAHUA BINDAL AND ORS.

... Petitioners

Through: Mr. Samar Bansal, Ms. Devahuti
Pathak, and Mr. Sachin Mishra, Advs.

versus

GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY AND ORS.

... Respondents

Through: Ms. Anita Sahani for R-1/GGSIPU
Mr. Ramesh Singh, Standing Counsel with Ms.
Tara Narula, Ms. Aparajita Sinha and Ms. Bhawna
Kataria, Advs. for R-2
Mr. T Singhdev and Ms. Michelle B Das, Advs.
for R-3/Medical Council of India
Mr. Apoorv Kurup, and Ms. Nidhi Mittal, Advs. for
R-5 (UGC)
Mr. Ajay Digpaul CGSC For Union of
India/R-6
Mr. Krishnan Venugopal, Senior Advocate, with
Mr. Shivendra Singh, Advocate, for R-7 to 12

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This writ petition is filed by the petitioners seeking the following reliefs:-

“(i) DECLARING policy of Respondent No. 1 University of allocating entire 50% State Quota of Post Graduate Medical College seats to MBBS graduates from colleges affiliated only to itself by way of 'Institutional Preference' as violative of Article 14 of the Constitution and being without authority of law;

(ii) DIRECTING Respondent No. 1 University to amend its Admissions Guidelines / Brochure for Academic Year 2020-21 without reserving entire 50% State Quota only for graduates of colleges affiliated to itself by way of 'Institutional Preference', as was done in previous Academic Years and allowing HIMSR MBBS Graduates in the State-wise Merit List;

(iii) DIRECTING Respondent No. 2 State Government to frame appropriate guidelines to ensure that all MBBS students from State and Deemed Universities in Delhi are given adequate opportunity to avail of 50% State Quota in Post Graduate Medical Courses on the basis of State Wide Merit List, that includes HIMSR students, and no University is permitted to monopolise entire State Quota only for its own students;”

2. The petitioners are MBBS graduates and students from Jamia Hamdard University/respondent No. 4 which is said to be an institute of eminence which offers courses at undergraduate, postgraduate and post-doctoral level in medical and allied subjects. The undergraduate course for the first batch of MBBS students started in July 2012 and the students passed out in 2017.

3. It is further pointed out that admission to postgraduate medical courses in India is made from two sources: (i) 50% seats are filled up on the basis of the marks obtained in NEET in which medical graduates from across the country are eligible to appear and (ii) 50% seats are filled up on the basis of rules to be framed in accordance with the law by the State Government or

appointed authority limited to students who have appeared in NEET which is also called "State Quota". It is stated that the present writ petition relates to 'State Quota'. It is further pointed out that a question arose that whether 'Institutional Preference', namely the right of an institution offering postgraduate courses to reserve such seats for undergraduate students from colleges affiliated to itself, can be permitted to be exercised while deciding manner of allocation of 50% seats of State Quota. It is further pointed out that following the judgments of the Supreme Court in the case of *Saurabh Chaudri v. Union of India*, (2003) 11 SCC 146 and *Yatinkumar Jasubhai Patel v. State of Gujarat*, (2019) 13 SCALE 523, it is now settled that even after introduction of NEET, the State Government or its appointed Authority has the power to reserve the entire 50% State Quota on the basis of Institutional Preference. However, it is pleaded that following well established constitutional principles, the said power must be exercised along with the duty towards fairness and non-discrimination under Article 14 of the Constitution.

4. It is further stated that in ostensible exercise of powers under the MCI PGME Regulations, respondent No. 1 University i.e. Guru Gobind Singh Indraprastha University (GGSIPU) has consistently reserved 50% State Quota for "Institutional Preference". As per clauses introduced in the admission brochure for postgraduate medical courses for academic year 2020-21, it has been clearly stated that only candidates who have obtained their MBBS Degree from GGSIPU, Delhi are eligible for admission to State Quota/Institutional Quota seats.

5. It is the contentions of the petitioners that there is no authority in law for respondent No. 1 University to implement Institutional Preference by way

of its admission brochures which are mere administrative directions. It is stated that this policy adopted by respondent No. 1 tantamounts to monopolising the entire 'State Quota' in the name of 'Institutional Preference' and fails the test of Article 14 of the Constitution. Further it is stated that even as per the judgments of the Supreme Court, Institutional Preference can only be accorded by the State Government or its appointed authority in accordance with procedure established by law. It is stated that the State Government has not framed any rules or policy to form the terms and the manner of allotment of 50% State Quota in Delhi. It is stressed that the power to allot 50% State Quota vests specifically with the State Government or its appointed authority. However, in the present case, erroneously respondent No. 1 University has been exercising the power to allocate 50% State Quota without any authorization.

It is also stated that apart from the above, the conduct of respondent No. 1 University is contrary to prevailing practice in various other States in the country where MBBS graduates of all universities are eligible for 50% State Quota and it is only the State Government or its appointed authority who has the power to allocate 50% State Quota. It is also stated that respondent No. 1 is a creature of the Indraprastha Vishwavidyalaya Act, 1998. There is no specific provision empowering the University to reserve 50% State Quota exclusively on the basis of Institutional Preference. This is the duty of the State Government or its appointed authority.

6. It is further pleaded that the said act of respondent No.1 University in monopolising the entire State Quota is arbitrary and illegal and in violation of Article 14 of the Constitution. The effect of the said act is that the entire 50% State Quota of postgraduate medical seats is available only to MBBS

candidates from respondent No. 1 University to the complete exclusion of similarly situated MBBS graduates from other universities located in Delhi such as the petitioners. It is further pointed out that there are approximately 473 postgraduate medical seats as against approximately 150 MBBS seats. Hence, virtually all the postgraduate seats would go to the MBBS graduates of respondent No. 1. It is further stressed that it is settled law that merit is the primary consideration for admission to educational courses and this principle is more strictly applied to an advance level of education. It is further strongly urged that students such as the petitioners who have graduated from Jamia Hamdard University-respondent No.4 are identically situated as the students who have graduated from respondent No. 1 University in all respects except the identity of their undergraduate college/university. Further, it is stated that an analysis of the NEET results would show that the students of Hamdard University-Respondent No. 4 are far higher ranked than the students of respondent No. 1 University.

7. As a background, it is pointed out that till 2002 there were only 3 medical colleges offering postgraduate medical courses in Delhi, namely, Maulana Azad Medical College, Lady Hardinge College and University College of Medical Sciences, all of which were affiliated to Delhi University which is a central university. From 2002 onwards, Vardhman Mahavir Medical College started functioning under respondent No. 1 University. In 2006, the said college also started offering postgraduate seats to its MBBS pass outs under 50% State PG Quota. Subsequently, this was applied to postgraduate seats available in all the hospitals/institutions under respondent No. 1 University like Safdarjung Hospital, RML Hospital and ESI Hospitals. It is pleaded that at that stage, there were no other MBBS graduates passing

out from any other state medical college/university and there was no requirement for Delhi Government to define eligibility for medical postgraduate admission or for common pooling of postgraduate seats. In 2012, Hamdard University has emerged as a new private medical college. In December 2017, MBBS students have started passing out from Hamdard University and that this has triggered an urgent need for the Government of NCT of Delhi to ensure that Hamdard University MBBS graduates are also eligible for the State Quota of MD/MS seats in the State/UT medical colleges. Two batches of MBBS graduates of Hamdard University have already suffered a loss of two years and one year respectively despite an outstanding rank in NEET-PG because of this discrimination.

8. Reliance is also placed on the prospectus of various States to contend that the arbitrariness of Institutional Preference System followed by respondent No. 1 becomes apparent on a perusal of these prospects. It is pleaded that in all other States, MBBS graduates from deemed universities are permitted to avail of the State Quota. The petitioners are similarly situated students but they have been put in a disadvantage position qua the students of respondent No. 1 University. Hence this writ petition.

9. Director General of Health Services, Ministry of Health and Family Welfare, Union of India has filed a short affidavit. It is stated that as per directions of the Supreme Court in the matter of **Anand S. Biji vs. State of Kerala, Civil Appeal No. 1944/1993**, the Director General of Health Services, Government of India, New Delhi has been entrusted with the responsibility to conduct online counseling for allotment of postgraduate (MD/MS/Diploma & MDS) seats to the eligible qualified candidates in participating government medical/dental colleges under 50% All India

Quota every year. The allotment of seats is based on NEET-PG conducted by National Board of Examinations, New Delhi. Further, it is stated that as per directions of the Supreme Court dated 09.05.2017 in W.P.(C) 267/2017 in the matter of *Dar-Us-Slam Educational Trust & Ors. vs. Medical Council of India & Ors.*, respondent No.7 i.e. the deponent is also conducting online counseling for allotment of 100% postgraduate (MD/MS/Diploma & MDS) with All India character in participating deemed universities across the country. It is further stated that allocation to the candidates is done based on the vacancy position furnished by the concerned governmental/central/deemed universities based on the existing eligible rules of the concerned governmental/central/deemed universities.

10. I may note that this court on 20.03.2020 when the matter came up for hearing had directed that the result of the counselling scheduled by the Medical Counselling Committee of respondent No. 7 with respect to respondent No. 1 shall be subject to the outcome of the present petition. This order was upheld by the Division Bench.

11. I have heard Mr.Samar Bansal, learned counsel for the petitioners, Ms.Anita Sahani, learned counsel for respondent No. 1 University, Mr.Ramesh Singh, Standing Counsel for Government of NCT of Delhi, Mr.T. Singhdev, learned counsel for Medical Council of India and Mr.Krishnan Venugopal, learned senior counsel for the newly added respondents No. 7 to 12. Learned counsel have argued the matter extensively spread over number of hours/number of days.

12. Mr.Samar Bansal, learned counsel for the petitioners has strenuously urged as follows:-

(i) It has been stressed that in terms of the MCI Postgraduate Medical Education Regulations 2000, 50% of the PG seats are filled up on the basis of All India Quota i.e. from All India merit list based on NEET ranking and the remaining 50% seats are filled up on the basis of State Quota i.e. from a state-wise merit list based on NEET. It has been urged that the present writ petition pertains only to the 50% State Quota. It is clarified that the present writ petition does not challenge the concept of 'Institutional Preference'. The primary challenge, it is stated, is that respondent No.1 University has no authority in law to decide the issues pertaining to State Quota seats. It is stressed that the policy regarding the exercise of institutional preference must be set by the State Government or an authority so specifically designated for that purpose. The respondent No.1's policy for allotting the entire 50% state quota to institutional preference is not framed by the State. It is also stated that Delhi is the only State which is not stating its policy with regard to 'State Quota'.

Further, it is pleaded that what is in issue is 'State Quota' and not any 'Institutional Quota' inasmuch as even respondent No. 1 University in its brochure terms the quota as 'State Quota'.

(ii) It is further stated that the stand of Government of NCT of Delhi is contrary to the judgment of the Supreme Court in the case of and ***Yatinkumar Jasubhai Patel v. State of Gujarat (supra)***. The action of the State Government is an abdication of its duty.

(iii) It is further strongly urged that under the Indraprastha Vishwavidyalaya Act, there are no powers given to reserve seats the way it is being done in the present case. It is mandatory for the Government of NCT of Delhi to pass an appropriate statutory provision or an ordinance.

(iv) It is further strongly urged that all States other than Delhi are allowing deemed universities to apply for the State Quota. It is only the Government of NCT of Delhi which has denied the students of a deemed university to apply for the State Quota.

(v) It is next stated that the act of the respondent is wholly arbitrary and ultra virus Article 14 of the Constitution of India. It is stressed that while institutional preference is permitted, it is a matter of State policy and it must pass the test of Article 14. Keeping in mind the purpose of permitting the policy of institutional preference, treatment of similarly situated MBBS students in every state of India, the said test has not been met by respondent No. 1 University.

(vi) Reliance is also sought to be placed upon judgment of the Gujarat High Court in R/SCA No. 4391/2012 titled as ***Shivam H. Thakkar vs. State of Gujarat***, judgment of the Bombay High Court in W.P.(C) 1863/2009 titled as ***Dr.Sahil Deepak Rasane vs. State of Maharashtra*** and judgment of the Allahabad High Court in W.P.(C) 13075/2019 titled as ***Megha Sharma vs. UOI*** to plead that these high courts have held that denying deemed universities to compete for the postgraduate medical seats from the State Quota is arbitrary and ultra virus the Constitution.

(vii) Reliance is placed on a communication dated 13.08.2018 addressed to the Registrar, Medical Council of India where it has been stated by the State Government that the Hon'ble Minister has desired that the matter needs to be re-examined in the larger interest of the students of Delhi who are pursuing MBBS course as per the representation submitted by the Hamdard students/Parents Association.

13. Essentially, two-fold submissions have been strongly stressed, namely, that the policy of Institutional Preference followed by respondent No. 1 University is without authority of law and that the policy of Institutional Preference as presently existing in Delhi is wholly arbitrary, illegal and non-est.

14. Mr.Ramesh Singh, learned Standing Counsel for Government of NCT of Delhi, respondent No.2 has urged as follows:-

(i) He has stated that under Entry 25, List III of the Constitution, the State Government has the power to regulate the filling up of the postgraduate seats. However, this is only an enabling provision. It is stated that the Government of NCT of Delhi has adopted a 'hands off policy' and it was not necessary to exercise this power. It is stated that all educational institutions particularly the professional intuitions have complete autonomy in the matter of administration which includes admissions unless regulated by a valid law by the State. It is further stressed that respondent No.1 was created by an Act of Legislative Assembly of Government of NCT of Delhi being The Indraprastha Vishwavidyalaya Act, 1998. Respondent No. 1 is entitled to deal with 'Institutional Quota' as there is no statute, rules and regulations framed by GNCTD in this regard.

(ii) It has also been strongly urged that a perusal of the judgment of the Supreme Court in the case of *Saurabh Chaudri v. Union of India (supra)* and in the case of *Yatinkumar Jasubhai Patel v. State of Gujarat (supra)* shows that the quota in question is 'Institutional Quota'. It is not based on domicile of a candidate. Hence, being an Institutional Quota, the seats in question being of respondent No. 1 University for the course of postgraduate

medical seats, the quota has been rightly utilized by students who have done their MBBS from the said University itself.

15. Mr.Krishnan Venugopal, learned senior counsel appearing for respondents No. 7 to 12 has submitted as follows:-

(i) It has been strongly urged that the plea of the petitioners is barred on the principle of res judicata/principles akin to res judicata in view of the judgment of the Supreme Court in the case of ***Yatinkumar Jasubhai Patel v. State of Gujarat (supra)***. It is pointed out that the two writ petitions that were heard and disposed of by the Supreme Court by its judgment in the case of ***Yatinkumar Jasubhai Patel v. State of Gujarat (supra)***, were W.P.(C) 122/2018 titled as *Rashmika Gandhi & Ors. vs. UOI* and W.P.(C) 1479/2018 titled as *Rohit Gupta & Ors. vs. UOI*. The first writ petition of *Rashmika Gandhi & Ors. vs. UOI (supra)* was filed by MBBS graduates of the 2012 Batch of Hamdard Institute raising the same issues and same contentions as are being raised by the petitioners herein. Similar prayers were also sought for in the writ petition. Same is the case of *Rohit Gupta & Ors. vs. UOI (supra)* where also the petitioners were students undergoing MBBS course of the 2013 Batch of Hamdard Institute. It is pleaded that all these contentions which were substantially similar to the contentions now raised by the petitioners were raised in those petitions and the same were dismissed by the Supreme Court vide judgment in the case of ***Yatinkumar Jasubhai Patel v. State of Gujarat (supra)***. Hence, the petitioners cannot be allowed to re-agitate the same argument again and again.

(ii) Reliance is placed on the judgment of the Supreme Court in the case of ***Somavanti & Ors. vs. The State of Punjab & Ors., (1963) 2 SCR 774*** where the Court held that it is settled legal position that once an issue has

been raised, merely because it was not fully dealt with, cannot be a ground to re-agitate the same contention all over again.

(iii) It is further pointed out that reliance of the learned counsel for the petitioners on the judgments of the Bombay High Court, Gujarat High Court and Allahabad High Court is misplaced and misconceived. It is pointed out that against the judgment of the Allahabad High Court dated 30.05.2019 in the case of ***Megha Sharma vs. UOI (supra)***, an appeal went to the Supreme Court. The Supreme Court on 27.09.2019 just a few days before its pronouncement in the case of ***Yatinkumar Jasubhai Patel v. State of Gujarat (supra)*** kept the question of law open. Hence, it is pleaded that as the question of law was kept open, the said judgment ceases to be a binding precedent. Reliance is also placed on the judgment of the Delhi High Court in the case of ***Fashion Linkers & Ors. Vs. Savitiri Devi and Anr., (1995) 35 DRJ (DB) 195*** to plead that once a matter is left upon by the Supreme Court, the judgment ceases to be a binding precedent.

(iv) It has further been strongly urged that there is gross delay and laches on the part of the petitioners to approach this court. It is stated that at the last minute, the present writ petition was filed on 13.03.2020 when the first round of counselling was to start on 16.03.2020. It is stressed that the procedure followed which is the subject matter of the present writ petition for admission had been followed for the last three years. Petitioners knew since 2017 that the MBBS graduates of Jamia Hamdard University are not eligible to apply for the seats of GGSIPU, yet the petitioners have waited till the last minute to file the present writ petition. The counselling is more or less over and the same cannot now be undone at the instance of the petitioners. Further, it is pleaded that 31.07.2020 is the last date for

finalisation of admission and at this stage no relief can be granted to the petitioners.

(v) It has also been urged that necessary and proper parties have not been impleaded in the present writ petition. On 11.04.2020, the result of the first counselling was declared and 205 graduate students from IP colleges have been selected for the institutional seats. CM No. 10316/2020 was filed on 15.04.2020 seeking quashing of the list. All these parties were necessary and proper parties. Respondent No. 7 to 12 who are also affected parties being students who have been selected in the first round of counselling have got themselves impleaded on their own. Reliance is placed on judgment of the Supreme Court in the case of ***Vishal Ashok Thorat & Ors. Vs. Rajesh Shrirambapu Fate & Ors, Civil Appeal 5444/2019*** where the Supreme Court had observed that the petitioners ought to have impleaded the selected candidates whose names had already been published. The respondent therein could not have obtained any adverse order against the respondent without impleading them. Reliance is also placed on various other such judgments.

16. Ms.Anita Sahani, learned counsel for respondent No. 1 University has urged as follows:-

(i) It is pleaded that as per the judgment of the Supreme Court in the case of ***Saurabh Chaudri v. Union of India (supra)***, the State/appropriate authority is to decide regarding Institutional Quota. Respondent No. 1 is following the mandate of the Supreme Court in the said judgment. It is clarified that respondent No. 1 University has three colleges for postgraduate, namely, RML Hospital, Vardhaman Medical College (Safdarjung Hospital) and ESI Hospital.

(ii) It has also been pleaded that in large number of other cases, these issues which are sought to be raised herein have also been raised before this court. This court has dismissed all these petitions. Reliance is also placed on the judgment of the Supreme Court in the case of **Dr. Pooja Meena vs. Union of India**, W.P.(C) 111/2017 dated 29.03.2017 which dealt with a similar prayer and where it was pleaded that the entire State Quota seats are available only for graduates/students of Delhi University. It was pleaded that such an act was arbitrary and unconstitutional and denied right of consideration under the Delhi State Quota for IP University and Jamia Millia Islamia students. This writ petition was dismissed by the Supreme Court on 29.03.2017.

Similarly, reliance is placed on the judgment of the Delhi High Court in the case of **GGSIPU vs. Dr.Smit Rajput**, LPA No. 551/2013 dated 01.05.2015. In the SLP against the aforesaid judgment, the Supreme Court did not interfere in the said judgment. Based on the above judgments, it is pleaded that these issues raised herein have already been agitated and adjudicated upon by this court.

(iii) It is further pointed out that respondent No. 4-Hamdard University itself has various quotas, namely, 50% of the seats for postgraduate courses are reserved for the minority community, then, there is an NRI Quota, management quota for postgraduate, etc.. Hence, the petitioners cannot claim that they have been discriminated against.

17. Mr. T.Singhdev, learned counsel appearing for respondent No.3/MCI has urged as follows:-

(i) It is pleaded that petitioner No. 1 has taken two round of counselling and only two round of counselling are allowed. The petitioner is ineligible for any other round of counselling.

(ii) It is stressed that in the judgment of the Supreme Court in the case of ***Yatinkumar Jasubhai Patel v. State of Gujarat (supra)***, para 10 clearly states that it is for the appropriate authority/state to declare the policy. It is pleaded that any authority can do so and that the authority in the present circumstances is respondent No. 1.

18. In its rejoinder arguments, Mr. Samar Bansal, learned counsel for the petitioners has strongly stressed that the quota in question is 'State Quota' and it cannot be termed to be an 'Institutional Quota'. It has further been stressed that there are 33 deemed universities and out of these, 32 deemed universities except the students of Hamdard University are eligible for the State Quota.

It has also been stressed that merely because some issues stressed in this petition were raised in some of the petitions which were heard and disposed of in the case of ***Yatinkumar Jasubhai Patel v. State of Gujarat (supra)*** does not mean that grounds raised by the petitioner herein cannot be raised. The Supreme Court did not deal with those grounds though the grounds may have been taken. Reliance is placed on the judgments in the case of ***Arnit Das vs. State of Bihar, (2000) 5 SCC 488*** and ***Krishena Kumar vs. UOI, (1990) 4 SCC 207*** to plead that where the issues have been taken but not discussed, the same has no binding precedent.

19. The fulcrum of the entire arguments centres around the two judgments of the supreme Court in the case of ***Saurabh Chaudri v. Union of India***

(*supra*) and *Yatinkumar Jasubhai Patel v. State of Gujarat (supra)*. I may first have a look at these judgments.

20. In *Saurabh Chaudri v. Union of India (supra)*, the Supreme Court noted the judgment of the Supreme Court in the case of *Pradeep Jain vs. UOI, AIR 1984 SC 1420* where the Supreme court held as follows:-

“48. Referring to the State mentality and pointing out to law that there does not exist any separate State domicile in India, this Court specifically banished the residential requirement for the purpose of admission into postgraduate medical courses for all times. It directed: (SCC pp. 690-93, para 22)

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We are therefore of the view that so far as admissions to postgraduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to postgraduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the postgraduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the postgraduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same

manner as directed by us in the case of admissions to the MBBS course. But, even in regard to admissions to the postgraduate course, we would direct that so far as superspecialities such as Neurosurgery and Cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all-India basis.

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The Supreme Court further held:-

“64. The sole question, therefore, is as to whether reservation by way of institutional preference is ultra vires Article 14 of the Constitution of India. We think not. Article 14, it will bear repetition to state, forbids class legislation but does not forbid reasonable classification, which means: (1) must be based on reasonable and intelligible differentia; and (2) such differentia must be on rational basis.”

21. Similarly, the Supreme Court in the case of *Yatinkumar Jasubhai Patel v. State of Gujarat (supra)* noted that the core issue in the case was “Institutional Preference” for postgraduate medical admission. The court held as follows:-

“6.1. It is further submitted by the learned counsel for the respective petitioners that the two universities have provided “institutional reservation” to an extent of 100% of the State quota seats i.e. the entire State quota has been reserved for their alumni completely denying opportunity of selection to other State candidates. It is submitted that the petitioners being MBBS graduates from the State of NCT of Delhi are entitled to be considered under the State quota seats. It is submitted that at present because of the “institutional reservation”, the petitioners are not entitled to be considered under the State quota at all. It

is submitted that therefore 100% “institutional reservation” cannot at all be permitted even if it is otherwise held to be permissible.

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7. It is further submitted by the learned counsel for the writ petitioners that in *Pradeep Jain* [*Pradeep Jain v. Union of India*, (1984) 3 SCC 654] , “institutional preference” was limited to 50% of the total number of open seats. It is submitted that the same was held to be permissible at a time when 100% seats in the State colleges were filled up by the State. It is submitted that in *Students' Union v. AIIMS* [*Students' Union v. AIIMS*, (2002) 1 SCC 428 : 1 SCEC 886] , the “institutional reservation” was permitted only to an extent of 25%. It is submitted that similarly in *Saurabh Chaudri* [*Saurabh Chaudri v. Union of India*, (2003) 11 SCC 146 : 2 SCEC 452] , the “institutional preference” was permitted to the extent of 50%. It is submitted that even if this Court holds the “institutional preference” permissible, in that case, the same should be limited to 50% of the total number of State quota seats.

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9. The short question which is posed for consideration of this Court is, whether after the introduction of the NEET Scheme, still the “institutional preference” in the postgraduate medical courses would be permissible?

9.1. At the outset, it is required to be noted that, as such, and it is not in dispute that such “institutional preference” in the postgraduate medical courses is held to be permissible by this Court in a catena of decisions, more particularly a three-Judge Bench decision of this Court in *Pradeep Jain* [*Pradeep Jain v. Union of India*, (1984) 3 SCC 654] ; a Constitution Bench decision of this Court in *Saurabh Chaudri* [*Saurabh Chaudri v. Union of India*, (2003) 11 SCC 146 : 2 SCEC 452] ;

and in *Saurabh Dwivedi v. Union of India* [*Saurabh Dwivedi v. Union of India*, (2017) 7 SCC 626 : 8 SCEC 550] .

9.2. In *Pradeep Jain* [*Pradeep Jain v. Union of India*, (1984) 3 SCC 654] , it is observed and held by this Court as under: (SCC pp. 692-93, para 22)

“22. ... We are therefore of the view that so far as admissions to postgraduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to postgraduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the postgraduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the postgraduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admissions to the MBBS course. But, even in regard to admissions to the postgraduate course, we would direct that so far as super specialities such as neuro-surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all-India basis.”

9.3. Thereafter, a five-Judge Bench of this Court in *Saurabh*

Chaudri [*Saurabh Chaudri v. Union of India*, (2003) 11 SCC 146 : 2 SCEC 452] has reiterated the scheme of “institutional preference” as framed in *Pradeep Jain* [*Pradeep Jain v. Union of India*, (1984) 3 SCC 654] and has approved the “institutional preference” confined to 50% of the total number of open seats. In that decision, this Court also took note of the subsequent decision in *Dinesh Kumar (2) v. Motilal Nehru Medical College* [*Dinesh Kumar (2) v. Motilal Nehru Medical College*, (1986) 3 SCC 727] fixing the “institutional preference” to the extent of 25%. However, after taking note of the said decision, this Court has reiterated the scheme framed in *Pradeep Jain* [*Pradeep Jain v. Union of India*, (1984) 3 SCC 654] providing “institutional preference” confined to 50% of the total number of open seats. In *Saurabh Chaudri* [*Saurabh Chaudri v. Union of India*, (2003) 11 SCC 146 : 2 SCEC 452], this Court has again approved the “institutional preference”. Thus, right from 1971 onwards till 2017, consistently this Court has approved and/or permitted the “institutional preference” in the postgraduate medical courses.

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9.5. Even while giving admissions in the State quota/institutional reservation quota, still the admissions are required to be given on the basis of the merits determined on the basis of the NEET examination results. Under the circumstances, introduction of the NEET Scheme, as such, has nothing to do with the “institutional preference”. Therefore, the change by introduction of the NEET Scheme shall not affect the institutional preference/reservation as approved by this Court from time to time in a catena of decisions, more particularly the decisions referred to hereinabove. Under the guise of introduction of the NEET Scheme, the petitioners cannot be permitted to re-agitate and/or reopen the issue with respect to institutional preference which has been approved and settled by this Court in a catena of decisions, more particularly the decisions referred to hereinabove.

10. Now so far as the submission on behalf of the petitioners that if the 50% seats are reserved for State quota and if institutional preference/reservation is permitted to the extent of 50% of the total number of open seats, in that case, not a single seat in the State quota shall be available and therefore the percentage of institutional preference may be reduced to the extent of 25% or so is concerned, at the outset, it is required to be noted that as such the institutional preference to the extent of 50% of the total number of open seats has been approved by this Court in a catena of decisions, more particularly the decisions referred to hereinabove. The decision of this Court in *Dinesh Kumar (2)* [*Dinesh Kumar (2) v. Motilal Nehru Medical College*, (1986) 3 SCC 727] permitting 25% institutional preference has been distinguished by a Constitution Bench of this Court in *Saurabh Chaudri* [*Saurabh Chaudri v. Union of India*, (2003) 11 SCC 146 : 2 SCEC 452] . Therefore, once the institutional preference to the extent of 50% of the total number of open seats has been held to be permissible, in that case, thereafter it will be for the appropriate authority/State to consider how much percentage seats are to be reserved for institutional preference/reservation. It will be in the realm of a policy decision and this Court cannot substitute the same, unless it is held to be arbitrary and/or mala fide and/or not permissible. As observed hereinabove, a five-Judge Bench of this Court in *Saurabh Chaudri* [*Saurabh Chaudri v. Union of India*, (2003) 11 SCC 146 : 2 SCEC 452] has categorically allowed/permitted/approved the institutional preference/reservation in the postgraduate medical courses to the extent of 50% of the total number of open seats.”

22. A perusal of the aforesaid two judgments of the Supreme Court in the case of *Saurabh Chaudri v. Union of India* (*supra*) and *Yatinkumar Jasubhai Patel v. State of Gujarat* (*supra*) clearly shows that what is being allowed is reservation for Institutional Preference i.e. a student who has passed MBBS course from a medical college or university may be given

preference for admission to postgraduate courses in the same college or university but such reservation on the basis of Institutional Preference has not to exceed 50% of the total number of open seats available for postgraduate courses. The Constitutional Bench in ***Saurabh Chaudri v. Union of India (supra)*** has clearly allowed Institutional Preference for up to 50% of the open seats. This aspect has been reiterated by the Supreme Court in ***Yatinkumar Jasubhai Patel v. State of Gujarat (supra)***.

23. I also cannot help noticing that the contentions that are raised herein by the petitioners were also raised before the Supreme Court in the case of ***Yatinkumar Jasubhai Patel v. State of Gujarat (supra)***. Learned senior counsel appearing for respondents No. 7 to 12 had taken me through the two writ petitions that were filed in the Supreme Court and adjudicated upon by the Supreme Court in the case of ***Yatinkumar Jasubhai Patel v. State of Gujarat (supra)***.

24. Reference may be had to the writ petition in the case of ***Rashmika Gandhi & Ors. vs. UOI*** being W.P. (C) 122/2018. In the said writ petition, the petitioners clearly stated that petitioners No. 1 and 2 are MBBS students of the 2012 Batch of Hamdard Institute of Medical Sciences and Research and are not permitted to compete for 50% seats which are being offered by colleges affiliated to the other two universities in the city, namely, University of Delhi and GGSIPU since such admissions are restricted to the students only of the respective universities. It was specifically pleaded that the petitioners were specifically challenging the System of Institutional Reservation being followed by University of Delhi and GGSIPU as arbitrary, discriminatory, irrational and violation of the rights of the petitioners under Articles 14 and 15 of the Constitution of India. It was

prayed in the writ petition to quash the policy of Institutional Reservation for admission to postgraduate courses being followed by the two universities and to frame a proper admission policy so that 50% seats in the state government colleges are allocated without discrimination.

25. Similarly another writ petition was also filed under Article 32 of the Constitution of India being ***Rohit Gupta & Ors. vs. UOI*** being W.P.(C) 1479/2018. The petitioners therein were also undergoing MBBS course of the 2013 Batch from the Hamdard Institute and were vying for admission to postgraduate courses through NEET. It was the grievance of the petitioners therein that they were not permitted to compete for 50% seats which are being offered by the colleges affiliated to the two universities, namely, University of Delhi and GGSIPU.

26. The said two writ petitions being WP (C) 122/2018 and WP(C) 1479/2018 were heard along with the case of ***Yatinkumar Jasubhai Patel v. State of Gujarat (supra)***. In para 6 and para 10, the Supreme Court noted the submissions of the petitioners in the said two writ petitions, namely, that institutional reservation to an extent of 100% state quota is denying an opportunity for selection to other state candidates and that the said petitioners are entitled to be considered for the state quota seats. Both these writ petitions were dismissed rejecting the plea of the petitioners challenging the policy of GGSIPU of reserving the entire 50% seats/Institutional Quota in postgraduate courses for students of the graduation course of GGSIPU. Clearly, the same contentions and submissions are being raised by the petitioners herein now in this writ petition which have been rejected by the Supreme Court in the aforementioned case of ***Yatinkumar Jasubhai Patel v. State of Gujarat (supra)***.

27. I also cannot help noticing the judgments relied upon by the learned counsel for GGSIPU where also somewhat similar pleas were raised and were rejected. In this context reference may be had to the judgment of this court in the case of ***Guru Gobind Singh Indraprastha University vs. Dr.Samit Rajput***, LPA No. 551/2013 decided on 01.05.2015. That was a case filed by students of Maulana Azad Medical College affiliated to Delhi University stating that besides being considered for admission to the seats of postgraduate courses of their own college/university, they are also entitled to be considered for admission to the postgraduate courses of GGSIPU. It was pleaded by the petitioners therein that GGSIPU instead of considering all the students who have done their MBBS from Delhi for admission to 50% seats in the state/institutional quota was restricting the admission to only such students who had done their MBBS from GGSIPU or medical colleges affiliated to the said University. This court noted the findings of the Supreme Court in the case of ***Saurabh Chaudri v. Union of India (supra)*** and held as follows:-

“24. Though we are not returning any findings on merits as aforesaid but may record that the situation as in Delhi is not comparable to the situation which the learned Single Judge found prevalent in some of the other States i.e. of having a Common Entrance Examination for admission to PGMCs seats of several State Universities and treating the quota to be a State quota and not an Institutional quota. Here, both the Universities are not State Universities. While DU is a Central University, GGSIPU is a State University. We had during the hearing enquired from Mr. Manoj Goel, Advocate whether there was any comparable situation in any other State. No instance could be given. Mr. Krishnan Venugopal, Sr. Advocate in this regard has contended that there were different criteria for reservation in the two Universities with separate lists of reservations and

which would also pose a problem if a common admission process was to be followed. Again, in the circumstances aforesaid, the said issue has remained to be pleaded/addressed. It was also the contention of Mr. Venugopal that *Nidamarti Maheshkumar* relied upon by the learned Single Judge was a case of admission to MBBS and not of admission to post-graduate seats, the criteria for admission where to is different.”

The plea of the petitioners therein was rejected.

28. Similarly, reference may be had to another writ petition being W.P.(C) 111/2017 titled as *Dr.Pooja Meena vs. UOI* that was filed in the Supreme Court. In that writ petition also the grievance of the petitioners was that respondent No. 3 Delhi University had issued an admission notification for admission to MDS Course 2017 which categorically states that the entire State Quota seats are available only for a graduate student of Delhi University leaving out the petitioner for consideration under the said Delhi State Quota though the petitioners had completed their BDS/graduate qualification from institutions/universities of GGSIPU and Jamia Millia Islamia. The said writ petition was dismissed *in limine* on 29.03.2017.

29. Clearly, it follows that the aforesaid issues now being raised by the petitioners i.e. 50% seats of the PG course of GGSIPU being reserved for students of GGSIPU or such similar issues have been raised in several other petitions and have been consistently rejected by the Supreme Court and this court.

30. Learned counsel for the petitioners had vehemently sought to argue that the aforesaid judgments have not specifically dealt with the pleas raised by the petitioners and hence, do not have a binding precedent. Reliance is placed to support the above submission on the judgment of the

Supreme Court in the case of *Arnit Das vs. State of Bihar (supra)* and *Krishena Kumar vs. UOI (supra)*. I may look at these judgments.

31. In *Arnit Das vs. State of Bihar (supra)*, the Supreme Court held as follows:-

“20. A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined. (See *State of U.P. v. Synthetics & Chemicals Ltd.* [(1991) 4 SCC 139, para 41] SCC, para 41.)”

32. Similarly, the Supreme Court in the case of *Krishena Kumar vs. UOI (supra)* held as follows:-

“20. In other words, the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury (4th edn., Vol. 26, para 573)

“The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the

force of law and which when it is clear it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi.”

33. In my opinion, the aforesaid two judgments do not support the plea of the petitioners. As noted above, *ratio decidendi* has to be ascertained on a consideration of the judgment in relation to the subject matter of the decision. As noted above, in the case of *Yatinkumar Jasubhai Patel v. State of Gujarat (supra)*, the plea akin to that of the petitioners herein has clearly been noted in para 6 and 10 of the judgment and thereafter, on the basis of the reasons given, the petition has been dismissed. Para 10 of the said judgment clearly gives the reasons for rejecting the plea of 100% utilization of State Quota for Institutional Preference. The said para 10 may be looked at again. The same reads as follows:-

“10. Now so far as the submission on behalf of the petitioners that if the 50% seats are reserved for State quota and if institutional preference/reservation is permitted to the extent of 50% of the total number of open seats, in that case, not a single seat in the State quota shall be available and therefore the percentage of institutional preference may be reduced to the extent of 25% or so is concerned, at the outset, it is required to be noted that as such the institutional preference to the extent of 50% of the total number of open seats has been approved by this Court in a catena of decisions, more particularly the decisions referred to hereinabove. The decision of this Court in *Dinesh Kumar (2)* [*Dinesh Kumar (2) v. Motilal Nehru Medical College*, (1986) 3 SCC 727] permitting 25% institutional preference has been distinguished by a Constitution

Bench of this Court in *Saurabh Chaudri* [*Saurabh Chaudri v. Union of India*, (2003) 11 SCC 146 : 2 SCEC 452] . Therefore, once the institutional preference to the extent of 50% of the total number of open seats has been held to be permissible, in that case, thereafter it will be for the appropriate authority/State to consider how much percentage seats are to be reserved for institutional preference/reservation. It will be in the realm of a policy decision and this Court cannot substitute the same, unless it is held to be arbitrary and/or mala fide and/or not permissible. As observed hereinabove, a five-Judge Bench of this Court in *Saurabh Chaudri* [*Saurabh Chaudri v. Union of India*, (2003) 11 SCC 146 : 2 SCEC 452] has categorically allowed/permitted/approved the institutional preference/reservation in the postgraduate medical courses to the extent of 50% of the total number of open seats.”

34. Clearly, the pleas as raised herein were noted and rejected.

35. Even if for some reason, it is held that the observations of the Supreme Court in the aforementioned judgment are not *ratio decidendi* and are *obiter*, this court would still remain bound by the said observations. Reference in this context may be had to the judgment of the Supreme Court in the case of *Municipal Committee, Amritsar vs. Hazara Singh, 1975 (1) SCC 794* where the Court held as follows:-

“4.

“Judicial propriety, dignity and decorum demand that being the highest judicial tribunal in the country even obiter dictum of the Supreme Court should be accepted as binding. Declaration of law by that Court even if it be only by the way has to be respected. But all that does not mean that every statement contained in a judgment of that Court would be attracted by Article 141. Statements on matters other than law have no binding force. Several decisions of the Supreme Court are on facts and that

Court itself has pointed out in *Gurcharan Singh v. State of Punjab* [1972 FAC 549] and *Prakash Chandra Pathak v. State of Uttar Pradesh* [AIR 1960 SC 195 : 1960 Cri LJ 283] that as on facts no two cases could be similar, its own decisions which were essentially on questions of fact could not be relied upon as precedents for decision of other cases.

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36. Similarly, reference may also be had to the judgment of the Supreme Court in *Peerless General Finance and Investment Co. Ltd. vs. Commissioner of Income Tax*, 2019 SCC OnLine SC 851. The Supreme Court held as follow:-

“13. While it is true that there was no direct focus of the Court on whether subscriptions so received are capital or revenue in nature, we may still advert to the fact that this Court has also, on general principles, held that such subscriptions would be capital receipts, and if they were treated to be income, this would violate the Companies Act. It is, therefore, incorrect to state, as has been stated by the High Court, that the decision in *Peerless General Finance and Investment Co. Limited* (supra) must be read as not having laid down any absolute proposition of law that all receipts of subscription at the hands of the assessee for these years must be treated as capital receipts. We reiterate that though the Court's focus was not directly on this, yet, a pronouncement by this Court, even if it cannot be strictly called the *ratio decidendi* of the judgment, would certainly be binding on the High Court. Even otherwise, as we have stated, it is clear that on general principles also such subscription cannot possibly be treated as income. Mr. Ganesh is right in stating that in cases of this nature it would not be possible to go only by the treatment of such subscriptions in the hands of accounts of the assessee itself. In this behalf, he cited a decision of the Division Bench of the Allahabad High Court

in *Commissioner of Income Tax v. Sahara Investment India Ltd.*, reported as Volume 266 ITR page 641 in which the Division Bench followed *Peerless General Finance and Investment Co. Limited* (supra), and then held as follows:

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37. It would clearly follow that even *obiter dictum* passed by the Supreme Court would be binding on this court.

38. In my opinion, this court is bound by the aforesaid two judgments of the Supreme Court in the case of *Yatinkumar Jasubhai Patel vs. State of Gujarat* (supra) and *Dr. Pooja Meena vs. UOI* (supra) which noted pleas similar to the pleas raised herein and have dismissed the said petitions.

39. I may now deal with the other pleas raised by learned counsel for the petitioners. One plea which was strongly raised by learned counsel for the petitioners was that there is no specific decision taken by the Government of NCT of Delhi regarding the apportionment of the State Quota. It was strongly urged that in the absence of a clear statutory stipulation or administrative direction permitting GGSIPU to allocate the entire State Quota to the students of its own university, the same is illegal.

40. Mr. Ramesh Singh, learned Stand Counsel for the Government of NCT of Delhi has pointed out that under Entry 25, List III of the Constitution of India, the Government has the power to regulate. However, he has rightly pointed out that this is only an enabling provision and the Government is following a ‘hands off policy’.

41. In my opinion, the Government of NCT of Delhi is supporting the action taken by GGSIPU. No fault can be found merely because some formal communication has not been issued by Government of NCT of Delhi.

The Institutional Reservation has been carried out as per the judgments of the Supreme Court.

42. Another submission that was strongly urged by learned counsel for the petitioners was that the action of the respondent in abrogating the entire State Quota seats to students of GGSIPU is arbitrary and ultra-virus Article 14 of the Constitution of India. He had sought to rely upon the above noted judgments of the Bombay High Court, Allahabad High Court and Gujarat High Court.

43. It was rightly pointed out that against the aforementioned judgment of the Allahabad High Court in the case of *Megha Sharma vs. UOI (supra)*, an SLP was filed in the Supreme Court being SLP No. 20885/2019 which was dismissed by the Supreme Court on 27.09.2019 keeping the question of law open.

44. A perusal of the judgment of the Bombay High Court in the case of *Dr.Sahil Deepak Rasane vs. State of Maharashtra (supra)* and the judgment of the Gujarat High Court in the case of *Shivam H. Thakkar vs. State of Gujarat (supra)* shows that the aforementioned judgments are not dealing with the issue of 'Institutional Preference'.

45. In the case before the Bombay High Court, the petitioners had obtained their MBBS decrees from deemed universities. The petitioners had applied for a common entrance test conducted by the State Government for admission to postgraduate seats of MD/MS/Diploma PG courses by a common entrance test to the colleges governed by the said test and the candidates who had obtained MBBS decree from deemed universities were held not eligible to appear for the said test.

In the case before the Gujarat High Court, the court noted that the

petitioner had passed out from a deemed university. The rules provided that the students who had passed out from a deemed university in the State were ineligible for getting a seat in the State Quota. In fact, the court in para 23 of its judgment specifically notes that the issue which crops up for consideration in this case is altogether different from the concept of institutional preference.

The said two judgments are not dealing with the issue of institutional preference. Factually, clearly the issues being considered in these two judgments were entirely different and do not help the case of the petitioners.

46. In the present case, respondent No. 1 GGSIPU is following the dicta of the Supreme Court in the case of *Saurabh Chaudri v. Union of India* (*supra*) and *Yatinkumar Jasubhai Patel v. State of Gujarat* (*supra*) and various other cases which have approved Institutional Reservation up to 50% of the PG seats. In view of the stated legal position, this is clearly permissible. The pleas of the petitioners are clearly without merit.

47. There is no merit in the present petition. The same is accordingly dismissed. Pending applications, if any, also stand dismissed.

JAYANT NATH, J.

JULY 30, 2020
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