



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9340/2023**

Date of Decision: **16.08.2023**

IN THE MATTER OF:

**UJJWAL SHORI THROUGH NATURAL GUARDIAN MR.
RAJESH KUMAR**

**THROUGH HIS NATURAL GUARDIAN
SH. RAJESH KUMAR**

**R/o: FLAT 1C, TOWER-3, DIAMOND CITY SOUTH
TOLLYGUNGE, KOLKATA -700041
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..... PETITIONER

**Through: Mr.Kavindra Solanki and
Mr.Nitin Kumar, Advocates.**

Versus

**UNIVERSITY OF DELHI
THROUGH ITS DEAN,
FACULTY OF MEDICAL SCIENCES,
6TH FLOOR, VALLABHBHAI PATEL CHEST INSTITUTE
BUILDING,
UNIVERSITY OF DELHI,
NEW DELHI-110007.**

.....RESPONDENT NO.1

**GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY
THROUGH ITS VICE CHANCELLOR
SECTOR-16 - C, DWARKA,
DELHI - 110078.**

.....RESPONDENT NO.2

GOVT. OF NCT DELHI

THROUGH ITS CHIEF SECRETARY,
DELHI SECRETARIAT,
NEW DELHI.

.....RESPONDENT NO.3

UNION OF INDIA
THROUGH ITS SECRETARY,
MINISTRY OF EDUCATION,
DEPARTMENT OF HIGHER EDUCATION,
109-C, SHASTRI BHAWAN,
NEW DELHI-110001

.....RESPONDENT NO.4

Through: Mr.Santosh Kumar, Ms.Akshita
Singh and Mr.Kushagra Aman,
Advocates for R-1.
Ms.Anita Sahani, Advocate for R-2.
Mr.Anurag Ahluwalia, CGSC with
Mr.Tarveen Singh Nanda, GP for R-3.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

CM APPL. 42011/2023

1. Heard learned counsel appearing on behalf of the parties on CM APPL. 42011/2023.
2. In view of the submissions made on behalf of the petitioner and for the reasons stated in the application, the same stands allowed.
3. The amended petition is allowed to be taken on record.
4. The application is disposed of accordingly.

W.P.(C) 9340/2023

5. The petitioner, *vide* the amended writ petition has made the following prayers:-

“(i) Issue a Writ of Mandamus to declare the Eligibility Conditions for admission to MBBS/BDS Courses of Delhi University as Ultra vires which makes it Mandatory for the "Prospective Candidate to Pass 11th and 12th standard examination under 10+2 system conducted by CBSE certificate examination/Jamia Milia Islamia, New Delhi or any other equivalent examination from a recognised School situated within the NCT of Delhi only.”

Issue a Writ of Mandamus to declare the Eligibility Conditions for admission to MBBS/BDS Courses of Guru Gobind Singh Indraprastha University as Ultra vires which makes it Mandatory that the "Candidates shall be considered as Delhi Region Candidates if they passed the qualifying examination from any school/institute located in NCT of Delhi or from any college/institute affiliated to GGSIP University. All such candidates shall be notified as Delhi Region Candidates for the Purpose of counselling for admission.”

(ii) Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction to Respondent No.1 to No.4 for providing relaxation to Petitioner for due consideration for candidature under State quota of Delhi for admission to institution in Delhi State which comes under Central Government as well as State of NCT Delhi.”

(iii) Pass any other order or such other orders as may be necessary in the interests of justice, equity and good conscience.”

6. The facts of the case would show that the father of the petitioner is under an employment with Bharat Petroleum Corporation Limited since 2009 and presently, he is posted at Kolkata Eastern Regional Office, as Chief Manager (Legal). The petitioner, who was also residing with his father at Kolkata, has completed his Class IX to XII from Kolkata.

7. The petitioner being desirous of securing admission in MBBS course, appeared in NEET-2023 examination. According to him, the relevant NEET domicile rules disentitle him to claim the benefit of domicile of Delhi. The petitioner, therefore, challenges the aforesaid conditions as mentioned in the prayer clause on the ground of the same being arbitrary and illegal. According to the petitioner, by virtue of the job of the petitioner’s father, he

has to be transferred at different places and notwithstanding the fact that the petitioner is entitled for domicile of Delhi, he is being illegally denied with the benefit of being considered as a Delhi region student.

8. Learned counsel appearing on behalf of the petitioner places reliance on a decision of the Hon'ble Supreme Court in the case of ***Meenakshi Malik vs. University of Delhi and others***¹, a decision of the Division Bench of the High Court of Bombay in the case of ***Rajiv Purshottam Wadhwa vs. State of Maharashtra, through its Department of Medical Education and Drugs & Others***² and a decision of the same High Court in the case of ***Priya Kedar Gokhale and Another vs. State of Maharashtra, Through Ministry of Education and Others***³.

9. Learned counsel appearing on behalf of the respondents vehemently oppose the submissions made on behalf of the petitioner and they state that the facts and circumstances of the instant case are different from the decisions which are being relied upon on behalf of the petitioner.

10. According to learned counsel appearing on behalf of respondent no.1- University of Delhi, the case of ***Meenakshi Malik*** (supra) has been distinguished by the Hon'ble Supreme Court in a subsequent decision in the case of ***Anant Madaan vs. State of Haryana and Others***⁴.

11. Learned counsel appearing on behalf of respondent no.2-University draws the attention of this court to the decision rendered by this court in the case of ***Vished Through Legal Guardian Sushil Kumar & Ors. vs.***

¹ (1989) 3 SCC 112

² 2000 SCC OnLine Bom 359

³ 2022 SCC OnLine Bom 11645

⁴ (1995) 2 SCC 135

Directorate of Higher Education and Ors.*⁵, *Manisha V. vs. University of Delhi & Ors. in W.P. (C) No. 5385/2008 and another decision in the case of ***Dr. Himadri Das & Anr. vs. Government of National Capital Territory (NCT) of Delhi & Ors.***, in W.P. (C) No. 2042/2022. She submits that the controversy involved in the instant writ petition stands answered in all these decisions.

12. Learned counsel for the respondent no.2-University, besides the aforesaid decisions, also highlights that in the instant case, the word ‘Delhi candidate’ is defined under Section 3(f) of the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-exploitative Fee and Other Measures to Ensure Equity and Excellence) Act, 2007 (*hereinafter as the ‘Act of 2007’*). She, therefore, submits that in view of the definition under the statute, it is not possible either for the university or for the Government to define a Delhi candidate in any other manner except the manner in which Delhi candidates are defined under Section 3(f) of the Act of 2007.

13. She also submits that the Information Bulletin and all notices are strictly in accordance with the mandate of the Act of 2007; and therefore, no interference is called for.

14. I have considered the submissions made by learned counsel appearing on behalf of the parties and perused the record.

15. For the sake of clarity, it would be apposite to extract Section 3(f) of the Act of 2007, which reads as under:-

⁵ 2012 SCC OnLine Del 4295

“(f) "Delhi candidate" means a candidate who has appeared or passed the qualifying examination from a recognised school or institution situated in Delhi”

16. The Hon’ble Supreme Court in the case of **Meenakshi Malik** (supra), was considering the case where the father of the petitioner had to leave for Nigeria in the year 1982 and the candidate in that case, had to leave India and to undergo studies at different places. The Hon’ble Supreme Court has considered the facts of that case and has held that there was no real choice in the matter for such a candidate and the same was found to be a hard case where the rigor of the condition prescribed with respect to last two years’ education at Delhi was relaxed. Paragraph nos.4 and 5 of the said decision are reproduced as under:-

*“4. It seems to us that the qualifying condition that a candidate appearing for the Entrance Examination for admission to a Medical College in Delhi should have received the last two years of education in a school in Delhi is unreasonable when applied in the case of those candidates who were compelled to leave India for a foreign country by reason of the posting of the parent by the Government to such foreign country. **There is no real choice in the matter for such a student, and in many cases the circumstances of the student do not permit her to continue schooling in India.** It is, of course, theoretically possible for a student to be put into a hostel to continue her schooling in Delhi. But in many cases this may not be feasible and the student must accompany a parent to the foreign country. **It appears to us that the rigour of the condition prescribing that the last two years of education should be received in a school in Delhi should be relaxed, and there should be no insistence on the fulfilment of that condition, in the case of students of parents who are transferred to a foreign country by the Government and who are therefore required to leave India along with them.** Rules are intended to be reasonable, and should take into account the variety of circumstances in which those whom the rules seek to govern find themselves. We are of opinion that the condition in the prescription of qualifications for admission to a medical college in Delhi providing that the last two years of education should be in a school in Delhi should be construed as not applicable to students who have to leave India with their parents on the parent being posted to a foreign country by the Government.*

5. Accordingly, the denial of admission to the petitioner to a seat in one of the Medical Colleges in Delhi must be held to be unreasonable. It is not disputed that if the condition of schooling for the last two years in a school in Delhi is removed from the way, the petitioner would be entitled to admission in a Medical College in Delhi. In the circumstances, the petitioner is entitled to an order directing the respondents to admit her to one of the Medical Colleges in Delhi.”

[Emphasis supplied]

17. The case of **Meenakshi Malik** (supra) came to be relied upon in the case of **Anant Madaan** (supra) and in paragraph nos.11 and 12, it has been held as under:-

“11. The appellants drew our attention to a decision of this Court in *Meenakshi Malik v. University of Delhi* [(1989) 3 SCC 112 : (1989) 2 SCR 858] where the father of the candidate was in government service. He was posted by the Government outside India. As the parents were compelled to go outside India, the children were also required to go with their parents. This Court considered this as a hard case. It held that the qualifying condition that the candidate should have received the last two years of education in a school in Delhi, should be relaxed in that case as the candidate was compelled to leave India for a foreign country by reason of the posting of her parents by the Government to such foreign country. **The Court observed that there was no real choice in the matter for such a student and hence the rigour of the condition prescribing that the last two years of education should be received in Delhi should be relaxed in that case.**

12. None of the appellants who are before us are in a position similar to that of the appellant in the above case. In fact, the parents of Anant Madaan, Bharat B. Dua and Shalini Jain are in Haryana. In the case of Nandita Kalra the parents have voluntarily taken employment outside the State of Haryana. They are not in the same situation as the parents of Meenakshi Malik [(1989) 3 SCC 112 : (1989) 2 SCR 858] . **Therefore, the relaxation which was given by this Court in the case of Meenakshi Malik [(1989) 3 SCC 112 : (1989) 2 SCR 858] cannot be given to any of the appellants before us.”**

[Emphasis supplied]

18. If the facts in the case of **Anant Madaan** (supra) are compared with the case in hand, the same would indicate that the candidate in the case of

Anant Madaan (supra) was seeking admission in the State of Haryana on the ground that the said candidate was a resident of Haryana and was domicile of the said State. However, for variety of reasons, the candidate could not study for two years in the State of Haryana. The facts in the case of **Anant Madaan** (supra) are discernible from paragraph no.5. The same is reproduced as under:-

“5. Out of a large number of petitioners whose petitions were decided by the Punjab and Haryana High Court by its judgment dated 30-8-1994 (being the judgment of the third learned Judge to whom the matter was referred because of the difference of opinion between the two learned Judges), only four petitioners are before us as appellants. These are: Anant Madaan in appeal arising from SLP (C) No. 16093 of 1994, Bharat B. Dua in appeal arising from SLP (C) No. 16149 of 1994, Nandita Kalra in appeal arising from SLP (C) No. 18871 of 1994 and Shalini Jain in appeal arising from SLP (C) No. 20602 of 1994. Anant Madaan has passed his 10+1 and 10+2 examinations from New Delhi. According to him, his parents are residents of Haryana. Bharat Dua passed his ICSE (10th standard) examination as well as 10+1 and 10+2 examinations from Bishop Cotton School, Shimla in Himachal Pradesh. According to this appellant, his parents are residents of Haryana. Nandita Kalra has passed her 10th, 10+1 and 10+2 class examinations from New Delhi. Both her parents are also residing in New Delhi. Her father is in the Department of Science and Technology while her mother is a Professor. According to her, though her parents reside in New Delhi on account of their work, they are domiciled in Haryana. Shalini Jain has passed her 10th, 10+1 and 10+2 class examinations from New Delhi. Her parents, according to her, are residents in Haryana. According to all these appellants the condition which requires the candidates to have passed their 10th, 10+1 and 10+2 class examinations from recognised institutions in Haryana is arbitrary and discriminatory because it excludes children of parents who may be residents of or who may be domiciled in Haryana but who may have sent their children to schools or colleges outside Haryana for a variety of reasons. They have also challenged this requirement on the ground of hardship. All these candidates wanted to appear for the entrance test conducted by the Maharshi Dayanand University, Rohtak, Haryana.”

19. In paragraph no.8 of the said case, the Hon’ble Supreme Court was to

consider whether the condition requiring a candidate to have studied in Class X, XI and XII in a recognized institution in the State of Haryana, can be considered as arbitrary or unreasonable. The Hon'ble Supreme Court has held that preference in admission 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. Paragraph no.8 of the said decision reads as under:-

“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.P. Joshi v. State of Madhya Bharat [(1955) 1 SCR 1215 : AIR 1955 SC 334] , this Court making a distinction between the place of birth and residence, upheld a preference on the basis of residence in educational institutions.”

20. It is, thus, seen that conditions similar to the one in the instant case has been upheld by the Hon'ble Supreme Court in the case of **Anant Madaan** (supra). This case finds a closer resemblance to the facts and legal position involved in the instant case.

21. The Division Bench of this court in the case of **Vished** (supra) was also considering almost a similar challenge. In paragraph no.14 of the said decision, it has been held that it is the prerogative of the legislature to lay down the conditions for treating a particular candidate as a Delhi candidate.

22. In the case of **Vished** (supra), the Division Bench of this court, besides other decisions, also placed reliance on the case of **Anant Madaan** (supra). Paragraph nos.14 and 16 of the said decision in the case of **Vished** (supra)

reads as under:-

“14. It is the prerogative of the Legislature to lay down the conditions for treating a particular candidate as ‘Delhi candidate’. Position would have been different if the petitioner was denied reservation on the basis of Scheduled Caste certificate altogether. This is not so. Vide circular dated 4.7.2012, IP University clarified that if qualifying examination is passed from outside Delhi and reservation certificate issued anywhere in India, including Delhi, for SC/ST category, then admission is permissible under outside Delhi reserved category. Therefore, the petitioner is treated as belonging to reserved category even for admission in Delhi on the basis of SC certificate which he possesses. The only difference is that since he is not a ‘Delhi candidate’, the reservation permissible to him is against 15% quota meant for outside Delhi candidates.

16. In Vikas Pathania v. U.S.I., 1996 RLR 443, a Division Bench of this Court had repelled the contention that such a rule was arbitrary or unreasonable or violative of Article 14 of the Constitution in the following words:

(4) Keeping in view the observations made in Pooja's Malik's case which seem to have inspired by the judgment of the Supreme Court in Pradeep Jain v. Union of India(1984) 3 SCC 654 upholding the reservation in admission on the basis of residence requirement and Constitution reservations, we find no force in the present, writ petition. It is not that the right of the petitioner to appear in the All India Entrance Test for admission to medical colleges under the University of Delhi or all over India has been taken away. He has that right. We may mention that 15% of the total number of seats are admittedly to be filled up on the basis of All India Entrance Examination. Thus the requirement emphasised in Dr. Dinesh Kumar v. Moti Lal Nehru Medical College[1986] 3 SCR 345 stands fully satisfied. We further feel that the following observations made in para. 10 of Anand Madan v. State of Haryana(1995) 2 SCC 135 : AIR 1995 SC 955 clinch the issues:

“10. In the present case, the reservation which has been made on the basis of candidates having studied for the proceeding three years in recognised schools/colleges in Haryana is in respect of these 85% of seats. It excludes 15% seats which have to be filled in on an all-India basis. The eligibility criterion, Therefore, is in conformity with the decisions of this

Court referred to above. It cannot, Therefore, be considered as arbitrary or unreasonable or vocative of Article 14 of the Constitution.”

23. In the case of **Manisha V.** (supra), relied upon on behalf of respondent no. 2-University, while relying on all earlier decisions in paragraph no.19, it has been held that the candidate who has not completed his/her Class XI and XII from Delhi, is not eligible for admission in Delhi as Delhi candidate. Paragraph nos.19, 20 and 24 of the said decision read as under:-

“19. A Single Judge of this Court in (2003) V AD (Delhi) 68, Santosh Meena v. University of Delhi had upheld the restriction in admission on the basis of a candidate passing class 11th and 12th from Delhi for being eligible for admission in Delhi. In Santosh Meena (Supra) the candidate had undergone only 12th class examination in Delhi and in the circumstances relying on Pradeep Jain and Ors (Supra) had held that the law to enforce condition prescribing that class XI and XII should be completed for Delhi for being eligible for admission in Delhi, cannot be faulted and, therefore, it was held that the candidate Santosh Meena was not eligible for admission in Delhi.

20. Under the eligibility condition 2.4.3 of the bulletin of information, the admission to medical colleges in Delhi is restricted to those candidates who have passed 12th class examination under 10+2 system conducted by CBSE/Council for Indian School Certificate Examination/Jamia Millia Islamia, New Delhi within the National Capital Territory of Delhi and to those candidates who have studied 11th and 12th classes regularly from the recognized schools, therefore, cannot be faulted in the facts and circumstances. The reservation of not all the seats but some of the seats to only those candidates who qualify 11th and 12th classes from Delhi, therefore, cannot be quashed. Even in this reservation, a further classification, an exception has been made whereby the woman candidate of reserved category though they may be from outside Delhi and may not have done class 11th and 12th , are eligible for admission in Lady Hardinge Medical College. If this concession is given only for lady Hardinge Medical College, the petitioner cannot claim that same relaxation must be given for other two colleges that is University College of Medical Sciences and Maulana Azad Medical College. Therefore, the plea of the petitioner that clause 2.4.2 and 2.4.3 is not valid cannot be sustained and is rejected. The petitioner had not been given admission pursuant to entrance examination of 2008 as the rank of the petitioner was below the rank of the last candidate admitted in the reserved category. Therefore, the petitioner could not make a grievance for not

getting admission in lady Hardinge Medical College as no candidate in reserved category below the rank of the petitioner had been granted admission. The petitioner is not entitled for admission to University College of Medical Sciences and Maulana Azad Medical College. Therefore, the prayer contained in the petition cannot be granted nor it can be held that the petitioner is entitled for admission to University College of Medical Sciences on the basis of her result in common entrance test of 2008-2009.

24. The petitioner is not entitled for admission to University College of Medical Sciences as she is not eligible for admission there and she is not entitled for admission in Lady Hardinge Medical College as the last candidate admitted in the said college had rank much higher than the 49 rank of the petitioner in DUMAT 2009 examination. The writ petition CWP No.11469/2009 is, therefore, also without any merit and the petitioner is not entitled for any relief and the writ petition is, therefore, dismissed.”

24. The Co-ordinate Bench of this court in the case of ***Dr. Himadri Das*** (supra) was considering a similar question as to whether a student who resides in Delhi but has completed his education from school located in Gurugram, Haryana, can avail the benefit of reservation available to Delhi students for the purpose of admission in college. The petitioners therein had completed their Class XII from the school situated at Gurugram. This court in the case of ***Dr. Himadri Das*** (supra), while relying on the definition under Section 3(f) of the Act of 2007, the decision in the case of ***Anant Madaan*** (supra) and ***Vivekananda Institute of Professional Studies vs. Govt. of NCT and Anr.*** in W.P.(C) No. 3420/2016, *vide* paragraph nos.11 and 12 has held as under:-

“11. The Court has heard the submissions advanced by counsel for the parties. The language of Section 3(g) of the 2007 Act is clear and unambiguous. The term ‘Delhi candidate’ means a candidate who has appeared for or passed the qualifying examination from a recognised school or institution which is situated in Delhi. In the present case, Petitioner No. 2 has cleared his qualifying examination (i.e., Class XII

*examinations) at TSRS Gurugram and would not be eligible as a 'Delhi candidate', and thus, cannot avail the benefit under Section 12(1)(b) of the 2007 Act. TSRS Gurugram is not just a branch located outside the NCT of Delhi, as put forth by Mr. Ghose, but rather, a separate school recognised by the State Government of Haryana which falls under the ambit of the Education Department, Government of Haryana. **The determining factor to avail the benefit is the geographic location of the school providing the pass certificate of the qualifying examination, as opposed to the domicile of the student. Although the term 'Delhi student' which appears in Section 12(1)(b) of 2007 Act is not specifically defined or equated to the term 'Delhi candidate'; however, the reference to 'Delhi student', in the said provision, in the context of the instant statute, can have only one meaning i.e., 'Delhi candidate'. If the legislature had intended any other meaning, the same would have been defined therein. This court cannot give a meaning to the said term which is not specified in the said statute.***

12. There is merit in the contention of the counsel for Respondents qua the limited scope of judicial review in matters of policy and legislation, and implementing the same with respect to reservation. It is well-settled in law that Courts, while exercising judicial review, cannot entrench into the area earmarked for legislative bodies. The Courts can declare and interpret law remove an apparent lacuna, or fill-in gaps, when there is ambiguity in the statute. However, such is not the case here. Significantly, this aspect also cannot be ventured into by this Court in light of withdrawal of the challenge qua constitutional validity of the said provisions of the 2007 Act. Once the challenge was given up, the validity has to be presumed, and there can then be no scope to read down the provision or restrict its applicability in order to extend benefit of reservations as a matter of interpretation of the statute. This power of interpretation, if it were to be exercised at all, could only have been done by the Division Bench while examining vires of the provisions. This Court cannot read down the said provision without first declaring it as ultra vires, which cannot be done at this stage. Considering the foregoing, the Court does not find merit in the argument raised by the counsel for Petitioner."

[Emphasis supplied]

25. In view of the aforesaid, this court is not inclined to lay down conditions or assign any other meaning to Section 3(f) of the Act of 2007, when it is explicitly defined in the statute. As per the settled position of law,

the court while exercising its power of judicial review under Article 226 of the Constitution of India, should not usurp itself to supplant the meaning which is originally intended by any enactment of the legislature, unless it is warranted on the grounds of arbitrariness or vagueness of the provisions. There exists no scope for intermeddling when the statutory provision can be interpreted in clear and unambiguous terms.

26. So far as the decision relied upon on behalf of the petitioner in the cases of *Priya Kedar* (supra) and *Rajiv Purshottam* (supra) are concerned, in both the cases, there was no statutory Act as is existing in the instant case i.e., the Act of 2007. Therefore, these decisions are clearly distinguishable.

27. It is, thus, seen that any interpretation of Section 3(f) of the Act of 2007 so as to include any other category or to dilute the import of the said provision, would not be permissible under Article 226 of the Constitution of India.

28. The instant petition, accordingly, stands dismissed.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 16, 2023

nc/shs