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W.P.No.24139 & 24142 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2024

Pronounced on : 28.03.2024

CORAM : JUSTICE N.SESHASAYEE

W.P.No.24139 & 24142 of 2023
and WMP.Nos.23616 & 23618 of 2023

1.Minor.Shandeep.S

Rep. by his father and natural guardian

Mr.D.Santoche Coumar

... Petitioner in WP.No.24139 of 2023

2.Minor.Sanjeeiv.S

Rep. by his father and natural guardian

Mr.D.Santoche Coumar

... Petitioner in WP.No.24142 of 2023

Vs.

1.Union of India

Rep by Secretary to Government

Ministry of Health & Family Welfare

Nirman Bhawan

New Delhi - 110 001.

2.The Chief Secretary

Government of Puducherry

Goubert Avenue, Beach Road

White Town

Puducherry - 605 001.



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3.The Dean (Academic)
III Floor, Academic Section
JIPMER Academic Centre
Dhanvantri Nagar P.O
Puducherry - 605 006.

4.The Secretary
The National Medical Commission
Pocket 14, Sector 8, Dwaraka Phase-I
New Delhi - 110 077.

... Respondents in both WPs

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying for a (i) Writ of Certiorarified Mandamus calling for the records pertaining to the prospectus for the MBBS course - academic year 2023-24 on the file of the 3rd respondent and quash the same as illegal, incompetent and ultravires and consequently direct the 3rd respondent to fill up P-SC seats in the MBBS course based on the Constitution (Pondicherry) Scheduled Castes order, 1964 dated 05.03.1964 and as per the judgment of the Hon'ble Supreme Court and consequentially direct the third respondent to allot one seat under P-SC category in MBBS course at JIPMER Puducherry campus under Puducherry UT Domicile category to the petitioner by replacing the above referred migrant SC candidates who do not satisfy the Constitution (Pondicherry) Scheduled Castes order, 1964 dated 05.03.1964 or from the unfilled four seats earmarked for Puducherry Scheduled Tribe in JIPMER, Puducherry, and (ii) may pass such other or further orders as this Court may deem fit and proper to the facts and circumstances of the case.



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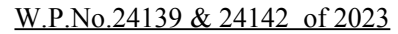
W.P.No.24139 & 24142 of 2023

For Petitioner : Mr.D.Sreenivasan
(in both WPs)

For Respondents : Mr.A.Murugan
(in both WPs) Central Government Counsel for R1
Mr.A.Tamilvanan
Additional Government Pleader for R2
Mr.AR.L.Sundaresan
Additional Solicitor General
Assisted by Mr.M.T.Arunan
Standing Counsel for JIPMER,
Ms.Arunesha, Ms.Malar Selvi for R3
Ms.Shubaranjani Ananth for R4

COMMON ORDER

1. These writ petitions are filed under Article 226 of the Constitution seeking a writ of Certiorari and Mandamus to quash the MBBS Prospectus of the 3rd respondent for the academic year 2023-2024 and for consequential directions to the 3rd respondent to fill up the Pondicherry Schedule Caste (P-SC) seats in the MBBS course on the basis of the Constitution Pondicherry Scheduled Castes Order, 1964, and allot one seat to the petitioners herein in the P-SC category in the MBBS course in place of the Schedule Caste candidates who have migrated from beyond the Union Territory of Puducherry.





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these seats must be allotted to those SC candidates who are natives of Pondicherry and not migrants.

- d) It is the case of the petitioners that the 3rd respondent has released a merit list under the P-SC category but has included candidates who do not fall within the castes notified under the Constitution (Pondicherry) Reservation Order, 1964. It is pointed out that the 3rd respondent has failed to notice the distinction between a SC candidate domiciled in Pondicherry who holds a residence certificate from a SC candidate who falls within the scope of the Constitution (Pondicherry) Reservation Order, 1964. As the admissions have been made by the 3rd respondent in violation of the Constitution (Pondicherry) Reservation Order, 1964, the entire admission process is illegal and ought to be quashed.

3.The Union of India and JIPMER have resisted the aforesaid contentions pointing out that JIPMER is classified as an institution of national importance and it functions under the aegis of the JIPMER Act, 2008. The scheme of reservations contemplated for institutions run by the Central Government is completely different from the reservations contemplated



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under Article 341 which applies to institutions run by the State and the Union Territory. The alleged violation of the Constitution (Pondicherry) Reservation Order, 1964, is therefore both misplaced and misconceived.

4. Heard Mr.D.Sreenivasan, learned counsel for the petitioners, Mr.AR.L.Sundaresan, the learned Additional Solicitor General of India, assisted by Mr. M.T Arunan, learned standing counsel for JIPMER, and Mr.Sharath Chandran, learned Amicus Curiae.

5.Mr.D.Sreenivasan, learned counsel for the petitioners contended that admissions to the P-SC quota in JIPMER cannot be done bypassing the constitutional mandate under Article 341 of the Constitution. That apart it is well settled that a person belonging to a SC community in one State cannot claim the status of a SC in another State. Reliance was placed on the ratio in *Marri Chandra Shekhar Rao v Dean, Seth G.S Medical College*[(1990) 3 SCC 130], *Action Committee on Issue of Caste Certificates to Scheduled Castes and Scheduled Tribes in the State of Maharashtra v Union of India*,[(1994) 5 SCC 244], *Bir Singh v Delhi Jal Board* [(2018) 10 SCC 312] and the decision of a Division Bench of this Court in *Attavanai Enna*



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Makkal v Secretary to Government [W.A 782 of 2014, dated 22.09.2014].

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6. In response, Mr. AR.L.Sundaresan, learned Additional Solicitor General contended that the issue pertaining to reservation of P-SC's in JIPMER was upheld by a learned single judge of this Court in ***Minor. D. Ram Vs JIPMER*** [(2004) 4 MLJ 472], wherein it was held that the reservation contemplated under the **domicile quota is a concession and not an aspect of reservation**. That apart, this Court has already rejected the contention that the scheme of reservation contemplated under Article 341 would not apply to an institution wholly funded and run by the Central Government. Resultantly, the writ petition ought to be dismissed as the law has already been settled by this Court over two decades ago.

7. Mr.Sharath Chandran, learned Amicus Curiae submitted as under:

- a) The Prospectus of JIPMER discloses that seat quota for SC candidates for MBBS course is classified into (i) open quota and (ii) domicile quota. Reservation in the former category is governed by the Central Educational Institutions (Reservation in Admission) Act, 2006. Insofar as the domicile quota is concerned, the power



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of the University to carve out such a category is traceable to Sec.13(m) of the JIPMER Act, 2008. This Court in ***Puvvala Sujatha Vs Union of India***, [AIR 2000 Madras 234], ***Minor. D. Ram Vs JIPMER*** [(2004) 4 MLJ 472] and ***Santhosh Tamilarasan.E Vs Union of India*** [(2014) 1 MLJ 538] has held that domicile reservation made by JIPMER is only a concession to which Article 15(4) does not apply. These decisions have been repeatedly followed by several single and Division Benches of this Court, which spotlights the conceptual difference between a concession falling short of reservation, and the reservation which is deeply entrenched in our jurisprudence, and today they command respect as *stare decisis*.

- b) In any event, the decision of the Supreme Court in ***Subhash Chandra Vs Delhi Subordinate Services Selection Board***, [(2009) 15 SCC 458] makes it clear that the reservations to institutions established and run by the Central Government follow the pan India reservation policy where Scheduled Castes from any State or Union Territory are eligible for being considered. Thus, the



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contention of the petitioner that reservation contemplated under Article 341 must apply to an institution funded and run by the Central Government may not be correct.

8. The short point for consideration is whether the eligibility criteria prescribed for the Puducherry UT Domicile prescribed in paragraph 7 (iv) of the prospectus of Jawaharlal Institute of Postgraduate Medical Education and Research (JIPMER) are invalid for contravening the Constitution (Pondicherry) Reservation Order, 1964. The history of the JIPMER goes back by over two centuries, 1823 to be precise, when the then French Government established the *Ecole de Medicine de Pondicherry* (College of Medicine at Pondicherry). Upon de-facto transfer of Pondicherry to India on 1st November, 1956, it came under the control of the Government of India and was renamed as the *Dhanvantri Medical College* in 1956. In 1964, the college was relocated and was rechristened as JIPMER. It has a campus at Karikal and has been functioning since 2017.

9. In 2008, the Parliament enacted the Jawaharlal Institute of Postgraduate Medical Education and Research, Puducherry Act, 2008. Section 2 of this



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Act declares JIPMER to be an institution of national importance. Section 4 of the Act declares that JIPMER, which was hitherto under the Union Ministry of Health and Family Welfare, will be a body corporate. Sec. 13 lays down various functions of the Institute. For the present purpose, Sec.13(m) is contextually relevant. It reads as follows:

“Section 13- With a view to the promotion of the objects specified in section 12, the Institute may,

(m) reserve at least twenty seats out of every seventy-five seats in undergraduate courses in the Institute for local applicants;”

The aforesaid provision has been considered by a learned single judge of this Court in ***Santhosh Tamilarasan. E Vs Union of India***, [(2014) 1 MLJ 538], who held that Sec.13(m) merely grants a concession, and that it should not be equated to a reservation.

10. It is now necessary to notice the provisions of the Central Educational Institutions (Reservation in Admission) Act, 2006, which deals with the subject of reservation in the admission of students belonging to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes of citizens, to certain Central Educational Institutions established, maintained



or aided by the Central Government. Sec.2(d) defines a Central Education

Institution as under:

“(d) “Central Educational Institution” means— (i) a university established or incorporated by or under a Central Act; (ii) an institution of national importance set up by an Act of Parliament; (iii) an institution, declared as a deemed University under section 3 of the University Grants Commission Act, 1956 (3 of 1956), and maintained by or receiving aid from the Central Government; (iv) an institution maintained by or receiving aid from the Central Government, whether directly or indirectly, and affiliated to an institution referred to in clause (i) or clause (ii), or a constituent unit of an institution referred to in clause (iii); (v) an educational institution set up”

JIPMER would fall under Sec.2(d)(ii) of the Act and it is an institution of national importance. Section 3 goes on to specify the extent of reservation in these institutions. For convenience, they can be summarised as under:

Category	Extent of reservation
SC	Out of the annual permitted strength in each branch of study or faculty, fifteen percent seats.
ST	Out of the annual permitted strength in each branch of study or faculty, seven and one-half percent seats.
OBC	Out of the annual permitted strength in each branch of study or faculty, twenty seven percent seats.



In other words, the aggregate reservation contemplated under the Act for a Central Government institution is 49.5% which is below the 50% threshold permitted by the decisions of the Supreme Court in *Indra Sawhney Vs Union of India*, [1992 Supp (3) SCC 217] and reiterated in *Jaishri Laxmanrao Patil v. State of Maharashtra*, [(2021) 8 SCC 1]. The Court is of course aware that the threshold limit of 50 % can be crossed in extraordinary circumstances as pointed out in *Jaishri Laxmanrao Patil case*, which however, do not arise on the facts of this case.

11.1 Turning to the impugned prospectus, it is seen that the total number seats for the MBBS Course in JIPMER, Puducherry and Karaikal is as follows:

JIPMER PUDUCHERRY

<i>Seat Category</i>	<i>Total Seats</i>
Open	134
Puducherry UT Domicile	48
Total	182

JIPMER KARAIKAL

<i>Seat Category</i>	<i>Total Seats</i>
Open	45
Puducherry UT Domicile	16



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<i>Seat Category</i>	<i>Total Seats</i>
Total	61

The prospectus makes a broad classification based on open quota seats and domicile quota seats. For the open quota seats, the category-wise distribution of seats is as follows: (i) unreserved (ii) OBC (Non-Creamy Layer) (iii) SC/ST and (iv) EWS, Economically Weaker Sections, apart from 5% horizontal reservation for persons with benchmark disabilities (PwBD).

11.2 For domicile quota, the category-wise distribution of seats is as follows: (i) Puducherry - unreserved (ii) Puducherry - OBC (Non-Creamy Layer) (iii) Puducherry - SC (iv) Puducherry - ST (v) Puducherry - EWS, Economically Weaker Sections and (vi) Puducherry -PwBD.

12.The eligibility criteria as prescribed in the prospectus for a candidate to fall in the Puducherry Domicile quota is as under:

A candidate is considered to be domicile to the UT of Puducherry (P-UR), if he/she satisfies at least one of the following domicile criteria (Refer Annexure – I for the Format of Certificates)

a) Those candidates or whose parent (either mother or



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father or both) or their Guardian (in the case of children who have lost both parents) have been residing continuously in this Union territory for at least five years immediately preceding the closing date of NTA NEET 2023 application.

b) Those who have passed SSLC/HSC or any other public examination and for that purpose had undergone academic studies continuously for 5 successive classes immediately preceding the qualifying examination (including the year of the qualifying examination) in recognised educational institutions(s) located in Puducherry Union Territory and having their residence in the Puducherry Union Territory for five years continuously during that period.

c) Children whose parents are Central Government Servants, Employees of Central Government Autonomous institutions, State Government Servants, Defence Personnel, Central Paramilitary Forces, Employees of Public Sector Undertakings wholly or substantially run either by the Central Government or by the Puducherry Union Territory administration, posted and serving in the Puducherry Union Territory for at least a minimum continuous period of three years immediately prior to the last date of submission of application and the children of the above said employees should have studied in the Higher Secondary Course of two years in any of the



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schools in the U.T. of Puducherry and should have also passed the Higher Secondary Examination from the same school. [G.O. Ms. No. 04, Puducherry, dated 09-02-2016 of the Chief Secretariat, (Hr. & Tech. Edn.) Puducherry]

d) Children of Defence Personnel who were killed or disabled in action and who have declared Puducherry as their hometown.”

13. Mr. D. Sreenivasan, learned counsel for the petitioners is aggrieved by clauses (a) and (b) *supra*, since it permits candidates or their parents who have migrated to the UT of Puducherry and have been continuously residing in Puducherry for at least five years immediately preceding the closing date of NTA NEET 2023 application or have studied in educational institutions and continuously resided in Puducherry for the past five years to compete in the domicile quota.

14. As outlined earlier the petitioners' contention is that such a qualification as prescribed in the prospectus is in blatant violation of the Constitution (Pondicherry) Scheduled Caste Reservation Order, 1964. The rationale behind this argument is that, by permitting the migrant Scheduled Caste students to compete with the native SC students, for whose benefit the



Presidential Order of 1964 was notified, the chances of the latter to seek admission to JIPMER is largely minimised.

15. The petitioners have placed excessive reliance on the ratio in ***Marri Chandra Shekhar Rao v Dean, Seth G.S Medical College*** [(1990) 3 SCC 130], but this case does not involve an issue which the petitioners have now raised. In that case, the petitioner had migrated from Andhra Pradesh to Bombay and had sought admission in the MBBS course in a college run by the Bombay Municipal Corporation under the SC category. It is in this context the Supreme Court had observed as under:

"13. But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates."

However, in the context of reservations in educational institutions run or



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administered by the Central Government, the above proposition does not apply. The Supreme Court proceeds to hold in **Marri Chandra Shekhar**

Rao case as below:

“18. We have heard learned Attorney General of India and he has drawn our attention to the policy followed by the Government of India for the Scheduled Castes and Scheduled Tribes. The policy seems to be as under:

I. Scheduled Castes and Scheduled Tribes are entitled to derive benefits of the all-India Services or admissions in the educational institutions controlled/administered by the Central Government, irrespective of the State to which they belong. The reservation in force in favour of the Scheduled Castes and Scheduled Tribes in filling vacancies in posts and services under the Government of India are as in the enclosure (Chapter II of the Brochure on the Reservation for Scheduled Castes and Scheduled Tribes in Services issued by the Government of India). The reservations for Scheduled Castes and Scheduled Tribes in the all-India services are covered by these provisions and at present are 15 per cent and 7.5 per cent respectively. The Central Government/government services include the all-India services i.e. the Indian Administrative Service, the Indian Police Service, the Forest Service, etc.”



Subsequently, in ***Subhash Chandra Vs Delhi Subordinate Services Selection***

Board, [(2009) 15 SCC 458], the Supreme Court has reiterated the aforesaid position by observing as under:

“29. Concededly, in respect of education or service, there exists a distinction between State Services and State-run institutions including the Union Territory Services and Union Territory-run institutions on the one hand, and the Central Civil Services and the institutions run by the Central Government on the other. Whereas in the case of the former, the reservation whether for admission or appointment in an institution and employment or appointment in the services or posts in a State or Union Territory must confine to the members of the Scheduled Castes and Scheduled Tribes as notified in the Presidential Orders but in respect of All India Services, Central Civil Services or admission to an institution run and founded by the Central Government, the members of the Scheduled Castes and Scheduled Tribes and other reserved category candidates irrespective of their State for which they have been notified are entitled to the benefits thereof. It is not denied or disputed that services in the Union Territory is essentially different from All India Services. It is also beyond any controversy that machinery for recruitment is also different. Indisputably again, not only the conditions of recruitment but also conditions of service differ.”

This ratio finds subsequent reflection in ***Bir Singh v. Delhi Jal Board***



[(2018) 10 SCC 312] where, speaking for the majority, Gogoi CJ has held:

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“The broad picture that emanates from the above discussion and narration is that insofar as the services in connection with the affairs of the Union is concerned (Central Services), wherever the establishment may be located i.e. in the National Capital Territory of Delhi or in a State or within the geographical areas of Union Territory, recruitment to all positions is on an all-India basis and reservation provided for is again a pan India reservation. This by itself, from one perspective, may appear to be in departure from the rule set out in Part XVI of the Constitution of India (Articles 341 and 342). However, the close look undertaken hereinbefore indicates such a position is fully in accord with the constitutional structure of a federal polity.”

These authorities only highlight and emphasis the conceptual difference between the institutions run and founded by the Central Government and those founded and run by the State Governments and the Union Territories vis-à-vis the reservation of seats or posts for the members of the Scheduled Castes without reference to Presidential Order passed under Article 341 and 342 of the Constitution. Set in that context, the ratio in ***Scheduled Tribes in the State of Maharashtra Vs Union of India***, [(1994) 5 SCC 244] is of little assistance since it dealt with the issue of caste certificates in the State



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of Maharashtra and did not deal with any issue pertaining to any institution run by the Central Government. So far as the ratio of the Division Bench of this Court in *Attavanai Enna Makkal v Secretary to Government* [W.A 782 of 2014] goes, it arose out of reservation made to admissions under the CENTAC which is a body functioning under the aegis of the Puducherry Government which implies that ratio of *Marri Chandra Shekhar Rao case* will have obvious application.

16. Turning to the issue of domicile quota, it is pointed out by the learned Amicus Curiae that the argument that reservation based on Article 341 and 342 and the Constitution (Pondicherry) Scheduled Castes Reservation Order, 1964, must apply only to Scheduled Caste candidates who fall under the domicile quotas has been repeatedly raised and rejected by several decisions of this Court. It is pointed out that the Supreme Court in *Anant Madaan Vs State of Haryana* [(1995) 2 SCC 135]had upheld the validity of domicile quota and had observed as follows:

“In the case of Jagadish Saran (Dr) v. Union of India [(1980) 2 SCC 768 : (1980) 2 SCR 831] this Court reiterated that regional preference or preference on the ground of residence in granting admission to medical colleges was not arbitrary or unreasonable so long as it was not a wholesale reservation on



this basis. This Court referred to various reasons why such preference may be required. For example, the residents of a particular region may have very limited opportunities for technical education while the region may require such technically qualified persons. Candidates who were residents of that region were more likely to remain in the region and serve their region if they were preferred for admission to technical institutions in the State, particularly medical colleges. A State which was short of medical personnel would be justified in giving preference to its own residents in medical colleges as these residents, after qualifying as doctors, were more likely to remain in the State and give their services to their State. The Court also observed that in the case of women students, regional or residential preference may be justified as their parents may not be willing to send them outside the State for medical education.”

One of the earliest decisions concerning the Pondicherry-Scheduled Caste quota in JIPMER is the decision in ***Puvvala Sujatha Vs Union of India*** [AIR 2000 Madras 234], where this Court had rejected an identical argument now advanced and held that the setting apart of seats for residents is only a concession and not a reservation. This Court had observed as under:

“The fact that the petitioners father belongs to a Scheduled Caste is not in dispute. But, as per the prospectus, eight seats



are set apart for Scheduled Castes. The second respondent being a Central Government institution, they have reserved eight seats for all the Scheduled Caste candidates. However, as a concession, in the place of the location of the institution, five seats are set apart for residents of Pondicherry Scheduled Castes. This is not to be treated as a reservation under Article 16(4). It is only a concession shown and a source of selection for the colleges on the basis of the location. Just like Pondicherry General where 15 seats are located to residents of Pondicherry, similarly, five seats are located to residents of Pondicherry. Those residents have no connection with the Scheduled Caste Presidential Notification. Further, it cannot be, in any way, restricting the right of the Scheduled Castes in the reservation of allotment to the eight seats reserved for Scheduled Castes.”

This decision was followed by another learned single judge in **Minor D.Ram Vs JIPMER** [(2004) 4 MLJ 472], where this Court had also observed as follows:

“Further, as far as Central Government institutions are concerned, no distinction is made between Scheduled Caste candidates who have the origin in a particular State or Union Territory and Scheduled Caste candidates who have migrated. This clarification is obtained in the Government of India, Department of Telecom Letter No. 1-13/92-SCT dated 18/31.8.1992. As per the clarification obtained from the



Ministry of Welfare and Ministry of Home Affairs, Department of Personnel and Training, there is no distinction between origin and migration cases as far as Central Government institutions are concerned. They are applicable only to State Government services and State Government educational institutions. Applying this criteria and in view of the fact that the conditions in Clause 3.5.1 of the Prospectus were met, respondents 4 to 12 have been admitted. The percentage of reservation for Scheduled Caste candidates in the respondent Institution is 15% and out of the 75 seats, 20 seats are reserved on residential basis and for the remaining 55, if 15% reservation is applied, it comes to 8.25 and therefore, 8 seats are given under the Open Scheduled Caste category. As regards the 20 seats, 15% reservation will actually come to three seats. On the other hand, five seats are given for Pondicherry Scheduled Castes. Therefore, the quota for Scheduled Castes has not been diminished. Out of that quota, as a concession, the Pondicherry Scheduled Caste candidates, as defined in the Prospectus, have been given five seats. The petitioner has participated in the examination quite aware of the reservation for Pondicherry Scheduled Castes. Having participated in the examinations, he now finds himself out of the running since other students who also applied under the Pondicherry Scheduled Caste category have acquired more marks than him; so, he has laid the challenge. There is no violation of the Constitutional requirement of reservation.”



17. The precise question that arises in this case was considered by a Division Bench of this Court in **S. Vijayashankar, Minor Vs The Director General of Health Services** [2006 Writ LR 200], which was an appeal by one of the petitioners in the batch before the learned single judge in **Minor D. Ram Vs JIPMER** [(2004) 4 MLJ 472]. The Division Bench considered and upheld the decision of the learned single judge considering the very same clauses that are impugned in the present writ petition. The Division Bench held as follows:

“The principle adopted in the Prospectus is in consonance with the principle adopted for employment under the Central Government, wherein the benefit/privilege of reservation is open to all persons who are declared to be Scheduled Caste or Scheduled Tribe in the Presidential notification applicable to various States and Union Territories. It is of course true that 5 seats have been earmarked for Pondicherry Scheduled Caste. However, those seats have not been confined to Scheduled Caste candidates of Pondicherry origin only. A person, who is considered as Scheduled Caste as per the Presidential notification applicable to any of the States or the Union Territories, is also entitled to the benefit of such category of Pondicherry Scheduled Caste, provided such candidate or his parents is residing continuously within the Union Territory of Pondicherry for at least 5 years or such candidate is the child of a Central/State Government servant



posted and serving in the Union Territory of Pondicherry for a period of one year. The basic intention is to provide the benefit to the residents of Pondicherry or who are employed within Pondicherry in connection with the Central/State Government or Public Sector undertakings.”

This decision has been followed by another Division Bench in ***Attavanai Ena Makkal Vs Secretary to Government*** [W.A.No.782 of 2014 dated 20.09.2014]. In ***Santosh Tamilarasan. E Vs Union of India*** [(2014) 1 MLJ 568] this Court considered the aforesaid decisions and once again reiterated the position as regards JIPMER in the following terms:

“14. The petitioners proceeded under a wrong notion that reservation of seats made by JIPMER for the local Scheduled Caste candidates was in the nature of a constitutional reservation. The entire case of the petitioners proceeds on that line.

15. There is no dispute that JIPMER is a Central Government Institution located in the Union Territory of Pondicherry. The institution has already reserved 15% seats in favour of Scheduled Caste Candidates. This reservation is not confined to the Scheduled Caste candidates of Pondicherry. While allotting 40 seats to the residents of Pondicherry, JIPMER reserved 15% seats to the Pondicherry Scheduled Castes, who are actually residing in the Union Territory of Pondicherry. This is not a Constitutional reservation. In fact, this



reservation is not at all a reservation in its true sense. It was only a concession given by the institution to the local Scheduled Castes. Such a prescription of residential qualification would not go against the constitutional scheme.

16. The distinction between Scheduled Caste Origin and Scheduled Caste Migrant would not be applicable to the institutions administered by the Central Government. When it comes to admission in State Government institutions or employment under the State, Scheduled Caste Origin alone would qualify for reservation. All others, who have migrated after the issuance of Presidential notification would be considered as Scheduled Caste migrants and they are not eligible for the right conferred by the Constitution on the Scheduled Caste of the concerned State.”

A similar view has been taken by another single judge in ***S. Ashok Kumar (Minor) Vs Secretary to Government*** [(W.P 17414 of 2018) dated 19.09.2018].

18.Mr.D.Sreenivasan, learned counsel for the petitioners with an indefatigable spirit contended that reservation cannot be treated as a concession since the very text of Section 13(m) of the JIPMER Act, 2008 uses the expression “*reserve*” which is not akin to a concession and that the expression ‘concession’ as used in ***Puvvala Sujatha, and Minor D. Ram***



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cases were decided prior to the JIPMER Act, 2008, and hence it cannot be

imported into Sec.13(m) which is in the teeth of the expression “*reserve*” occurring in the said Clause. This is an attractive argument but on closer scrutiny, it does not appeal for it overlooks the fact that the requirement of setting apart seats invoking Section 13(m) is purely discretionary. This is made clear by the word “*may*” occurring in the opening sentence of Section 13 of the JIPMER Act, 2008. And it needs to be understood in the context of the law as established in ***Subhash Chandra Vs Delhi Subordinate Services Selection Board***, [(2009) 15 SCC 458] ***Bir Singh v. Delhi Jal Board*** [(2018) 10 SCC 312].

19. In conclusion, the entire premise of these petitions are founded on an erroneous understanding that reservations to Central Government institutions ought to be governed by Article 341 and the Constitution (Pondicherry) Scheduled Castes Reservation Order, 1964. At the cost of repetition, the legal position is that in respect of admissions to an institution run and funded by the Central Government, the members of the Scheduled Castes irrespective of the State in which they have been notified are entitled to the benefits in these institutions.



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20. As regards the impugned domicile policy for resident/migrant Scheduled Castes, as discussed, supra, has been upheld by the decisions of two Division Benches and four single Judges in the last two decades. The doctrine of *stare decisis* is the fundamental principle of judicial decision-making which requires certainty in law so that in a given set of facts the course of action which the law shall take is discernible and predictable. See: **Narinder Singh Vs State of Punjab** [(2014) 6 SCC 466)]. *Stare decisis et non quieta movere* which means “to stand by decisions and not to disturb what is settled”, was stated by Lord Coke in its classic English version as: “Those things which have been so often adjudged ought to rest in peace”. In the context of these petitions, this Court would say “*Ita fiat, esto (So be it)*”.

21. In view of the above, both the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

28.03.2024

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order



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W.P.No.24139 & 24142 of 2023

To:

- 1.Union of India
Rep by Secretary to Government
Ministry of Health & Family Welfare
Nirman Bhawan
New Delhi - 110 001.
- 2.The Chief Secretary
Government of Puducherry
Goubert Avenue, Beach Road
White Town
Puducherry - 605 001.
- 3.The Dean (Academic)
III Floor, Academic Section



W.P.No.24139 & 24142 of 2023

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JIPMER Academic Centre
Dhanvantri Nagar P.O
Puducherry - 605 006.

4.The Secretary
The National Medical Commission
Pocket 14, Sector 8, Dwaraka Phase-I
New Delhi - 110 077.



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W.P.No.24139 & 24142 of 2023

N.SESHASAYEE.J.,

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Pre-delivery order in
W.P.Nos.24139 & 24142 of 2023

28.03.2024