

AT CHANDIGARH

C.W.P.No.3206 of 2022 (O&M)

Reserved on 21.10.2024

Date of Order:05.11.2024.

Devang Bansal and another

.Petitioners

Versus

Union Territory, Chandigarh and others

..Respondents

(2) C.W.P.No.5867 of 2022 (O&M)

C.W.P.No.5867 of 2022 (O&M)

Pradyumn Yadav and others

.Petitioners

Versus

Union Territory, Chandigarh and others

..Respondents

(3) **C.W.P.No.17244 of 2022 (O&M)**

C.W.P.No.17244 of 2022 (O&M)

Ms. Ananya Goswami

.Petitioner

Versus

Union Territory, Chandigarh Administration and others

..Respondents

(4) C.W.P.No.23292 of 2022 (O&M)

C.W.P.No.23292 of 2022 (O&M)

Ms. Ananya Goswami

.Petitioner

Versus

Union Territory, Chandigarh Administration and others

..Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE

HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Salil Sagar, Senior Advocate with

Mr. Sunil Kumar, Advocate

Mr. Rohit Paul, Advocate,

for the petitioner(s) in CWP-3206-2022.

Ms. Sanchi Bindra, Advocate, for

Mr. Amar Vivek Aggarwal, Advocate,
for the petitioner(s) in CWP-17244-2022 and CWP-23292-
2022.

Mr. Vivek Suri, Advocate,
for the petitioner(s) in CWP-5867-2022.

Mr. Sanjeev K. Sharma, Advocate for
Mr. Deepak Aggarwal, Advocate
for respondent No.21 in CWP-5867-2022 and
for respondent No.22 in CWP-3206-2022.

Mr.Akash Gahlawat, Advocate for
Mr. Sunil K. Nehra, Advocate
for the respondents No. 18, 20 and 21 in CWP-3206-2022.

Mr. Manish Verma, Advocate and
Mr. Suresh Kumar, Advocate
for respondents No.8, 14, 16 and 18 in CWP-5867-2022 and
for respondents No. 9, 15, 17 and 19 in CWP-3206-2022.

Mr. Sumit Sangwan, Advocate, for
respondents No. 7, 10, 11, 12 and 24 in CWP-5867-2022.

Mr. Ravi Sharma, Standing Counsel for respondent No.6.

Ms. Sumitra, Advocate for
Mr.Vikram Singh, Advocate
for respondent No. 22 in CWP-5867-2022 and
for respondent No.23 in CWP-3206-2022.

Mr. Arun Gosain, Senior Govt. Counsel for Union of India
for respondent nos.5, 25, 26, (in CWP-3206-2022 and
for respondent no.5, 27, 28 (in CWP-5867-2022).

Mr. Sanjeev Kumar Arya, Advocate,
for respondents No.13, 14 and 16 in CWP-3206-2022,
for respondents No.12, 13, 15, 24 to 26 in CWP-5867-2022

Mr. Himanshu Arora, Advocate,
for the respondent – UT Chandigarh.

ANIL KSHETARPAL, JUDGE

1. **BRIEF FACTS OF THE CASE**

1.1 Though this court is of the opinion that the issue is rendered
academic as the correctness of admission to MBBS Session 2021 is

questioned, however, the learned counsel representing the petitioners submits that damages can be awarded in view of judgment passed in

S.Krishna Sradha vs. State of Andhra Pradesh (2020) 17 SCC 465.

1.2 By this order, we will dispose of four Civil Writ Petition Nos. 3206, 5867, 17244 and 23292 of 2022, since they involve common issues that are germane to the admission process qua MBBS seats in Government Medical College and Hospital, Sector 32, Chandigarh, (hereinafter referred to as 'GMCH, Chandigarh'), with respect to academic Session starting in 2021. In substance, the petitioners have challenged the correctness of note appended to Clause A-3, in part A of the Centralized Admission Prospectus issued for the purpose of admission to GMCH, Chandigarh, Dr. Harvansh Singh Judge Institute of Dental Sciences & Hospital, Chandigarh and Homoeopathic Medical College & Hospital, Chandigarh, which is extracted as under:-

A-3): Eligibility Criteria and admission procedure for 115 UT Chandigarh Pool seats:(General Category, SC Category, Person with Disability Category)

1. The candidates must fulfill relevant General Eligibility Criteria (Page 7-8) 2. With reference notification No. GMCH/TA-1(4/E)/2018/45819-27 dated 31.10.2018 issued by Principal Secretary Home-cum-Medical Education & Research, Chandigarh Administration reproduced as under:- In pursuance of judgment dated 31.08.2018 passed by the Hon'ble Panjab & Haryana High Court at Chandigarh in CWP no. 18240, 17407,

19851, 21558, 21742 of 2018 (O & M) titled as Ashu Hooda Vs. Union Territory Chandigarh & Others, the Administrator, Union Territory, Chandigarh is pleased to frame the following eligibility criteria for admission to State Quota Seats in MBBS course in Government Medical College & Hospital, Sector-32, Chandigarh:-

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

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

iii) Candidates whose parents are employees of Central Government/State Government who are on deputation to U.T., Administration, including

government employees of Chandigarh Administration / employees working in autonomous bodies/ companies in which Chandigarh Administration has 20% or more share, for the past 03 years immediately preceding the date of application even if they do not satisfy the criteria as laid down in condition No. 1 & 2 above.

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

Candidates need to submit the following documents/ certificates to establish their eligibility for UT Chandigarh Pool :-

(i) Class 10, 10+1 and 10+2 Certificate from schools/colleges recognized by the Chandigarh Administration and situated in the Union Territory of Chandigarh, as regular student of the said school/college as per Appendix B1. OR

(ii) Residence Certificate to be issued by the DC-cum-Estate Officer/Sub Divisional Magistrate/ Tehsildar, U.T., Chandigarh in case of condition No.2 of the eligibility criteria as per Appendix B2.

OR

(iii) Certificate to be issued by the respective Head of the Department in the case of condition No. 3 of Eligibility Criteria for candidates whose parents are working in Central Government/ State Government and are on deputation to Chandigarh Administration/ employees of Chandigarh Administration / working in Autonomous bodies/ companies in which Chandigarh Administration has 20% or more share for the past 03 years immediately preceding the date of application as per Appendix B3.

Note:- These conditions (i-iii) are waived off in respect of wards of serving defense personnel/ex-servicemen vide letter no. 19/1/3-IH(3)-2007/18322 dated 14.09.2007.

AND Candidates of all three categories above, including wards of serving defense personnel/ ex-servicemen, will have to submit an undertaking / affidavit that the candidate has not opted and claimed benefit of residence in any other State/UT other than Chandigarh after the declaration of NEET result both at the time of applying and again a fresh undertaking at the time of appearing for counselling [as per Appendix B4]

NOTE:- i) The candidate who has applied for State

Quota seats claiming residence in any other state(s) / UT(s) other than UT Chandigarh, his/her candidature will be rejected.

ii) The candidate who has applied for State Quota/ Management Quota seats in Pvt. College/ Deemed Universities claiming residence in state(s)/ UT(s) other than UT Chandigarh, his/her candidature will be rejected.

iii) The candidate who have applied in GMCH as well as other states and have withdrawn their candidature from other states, their candidature will be cancelled and they will be treated as 'opted and claimed' in other states even if they withdraw the application after applying.

iv) If the clarification sought from the candidate by any means viz email, phone, text message, written letter etc. is not received within stipulated period, the candidature will be cancelled."

1.3 Admission to MBBS UG course is held on the basis of a common entrance test held by National Testing Agency. The total seats in the Medical Colleges are divided between all India quota (15%), whereas with respect to 85% seats, the State or the Union Territory is entitled to make admissions. The States as well as Union Territories have been providing for domicile based preference in admissions from time to time. These writ petitions pertain to admission with respect to 85% quota seats falling in UT Pool.

2. ARGUMENTS PUT FORTH BY THE LEARNED COUNSEL REPRESENTING THE PARTIES:-

2.1 The petitioners' senior counsel contends that the admission to the entire 85% of seats in the UT Pool was opened to the wards of serving defense personnel/ex-servicemen without requiring domicile, which is arbitrary, illegal, unconstitutional and contrary to the principle of preference. The learned counsel argues that this has resulted in injustice to UT domiciled candidates, as they are now required to compete with wards of serving defense personnel/ex-servicemen who have not met the domicile eligibility requirement for securing admission through UT Pool.

2.2 Moreover, as per the affidavit dated 12.07.2022, the Director, Medical College has categorically stated that there is no record or any notification available that supports the decision regarding incorporation of waiver clause in the prospectus and the petitioners are not guilty of delay as the Civil Writ Petition No.2357 of 2022 was filed on 09.02.2022, the first day of counselling. Ultimately, it has been contended that the Court's Act prejudices no man and hence, the time consumed in court proceedings cannot be deemed detrimental to the petitioners. It is contended that subsequently UT Administration has withdrawn the aforesaid note on 15.07.2022, which proves that the same was arbitrary.

2.3 Per contra, UT's counsel has submitted that the policy decision was taken at the highest level on 14.09.2007 (Annexure A-7, page 789) which is not in violation of any statutory provision. He submits that competence of authority is not challenged, therefore, the Court should desist from interfering. He informed the court that from the academic session beginning in 2023, the eligibility criteria has been amended and the amended

conditions require the residence proof at the time of admission even for wards of defense personnel/ex-servicemen at the time of entry into Army service. Moreover, the writ petitions suffer from unexplained delay and laches because the prospectus was issued on 28.12.2021, which stipulated that the last date for application shall be 11.02.2022. The impugned note stood incorporated in the prospectus continuously from academic Session 2011. The petitioners were aware of the same, however, they filed the first writ petition on 09.02.2022, which was the date of the first counselling. In such cases, the delay of one day is fatal. Additionally, the prospectus is binding and the petitioners are estopped from challenging the conditions subsequently after having submitted their applications.

3. **ANALYSIS AND DISCUSSION:-**

3.1 This court has considered the submissions of the learned counsel representing the parties.

3.2 Article 15 of the Constitution of India prohibits discrimination on the basis of religion, race, caste, sex or place of birth. As already noticed, the Courts have approved the institutional preference and domicile/residence based preferences consistently including **D.P Joshi v. State of Madhya Bharat , AIR 1955 SC 334**, wherein it was held that the place of birth is not synonymous to the expression 'domicile'. Once again this issue was examined threadbare in **Dr. Pardeep Jain etc. vs. Union of India and others, (1984) 3 SCC 654**. This judgment was again approved by Five Judge Bench in **Saurabh Chaudri and others vs. Union of India and others, 2003 (11) SCC 146**. The attention of the court has not been drawn to any constitutional or statutory provision requiring domicile/residence based

reservation/preference. The decision entirely rests upon the policy makers in the facts and circumstances in a particular situation. The scope of judicial interference in the policy decisions is extremely limited. The courts should be reluctant to interfere unless it is established that the policy decision has infringed the constitutional or statutory rights or it is wholly arbitrary/illegal. With respect to the Central Government, the Executive has the enabling power under Article 73 of the Constitution to take policy decisions.

3.3 The Union Territory had, at the relevant time, permitted admission to wards of serving defense personnel/ex-servicemen without any requirement of domicile as mandated for other candidates permitting them to compete for seats in UT Chandigarh, pool with the exclusive residents of Chandigarh which encouraged competition. The UT residents cannot claim that they are exclusively entitled to be admitted in UT Pool seats. On account of their job requirements the defense personnel/ex-servicemen are posted in various parts of the country. Such provision in the prospectus is not per-se illegal.

3.4 It is evident from the policy decision dated 14.09.2007, issued by Home Secretary, that a conscious decision was taken by the Administration to waive off the domiciliary restrictions of minimum stay in the States/UTs and condition of passing 10th and 12th standard examination from the same State/UT in respect of Wards of serving defense personnel/ex-servicemen seeking admission in institutions of Union Territory, Chandigarh was taken in order to mitigate the problem of admission in the colleges/institutions of higher level. The impugned note has

been consistently incorporated in the various prospectuses issued for time to time from academic session starting in the 2011. With respect to the relevant academic Session, 2021, the prospectus became available on 28.12.2021, whereas the first writ petition was filed on 09.02.2022. The delay of a single day is sufficient to deny the relief particularly when the future of students/next generation seeking higher education is at stake.

3.5 Even, the learned counsel representing the petitioners admits that admission at this stage would not be possible in the academic Sessions of 2021, however, he prays for grant of substituted relief in accordance with the judgment passed by the Hon'ble Supreme Court in **S.Krishna Sradha's case (supra)**. On careful reading of the judgment, it is evident that the Supreme Court in the peculiar facts and circumstances of the case particularly when it was found that no fault is attributable to the client who has pursued his/her rights and legal remedies expeditiously and without delay, the admission was granted in the next year by creating a supernumerary seat. As regards the substituted relief, this court does not find that the policy decision was arbitrary. It is significant to note that the courts are not tasked with offering opinions; their primary role is to ensure that the policies enacted are legal and do not violate constitutional or statutory provisions. As such, while policies may have flaws, as long as they are totally arbitrary or illegal, the court does not interfere. This ensures effective governance while still being held accountable to legal standards. The petitioners' counsel has also relied upon the judgment passed in **Rajdeep Ghosh vs. The State of Assam and others, (2018) 17 SCC 527**, in which the requirement of six years schooling from Class 7th to 12th in the State of

Assam along with other requirements were the subject matter of challenge. The Supreme Court dismissed the bunch writ petitions while upholding the enabling right of the State to give preference to its own residents, while declaring that the classification based on residence/domicile is permissible.

3.6 With reference to the affidavit of the Director of the Medical College, it may be noticed that Union Territory, Chandigarh, has placed on file the decision of the administration. Hence, the contents of the affidavit cannot be relied upon particularly when the Ministry of Defense, India, had written a letter to the Administrator of the Union Territory, Chandigarh, on 12.06.2007, in this regard which after having been considered, a conscious decision was taken.

4. **DECISION**

4.1 In view of the foregoing discussion, this Bench finds no merit in the writ petitions, which are hereby dismissed.

4.2 All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

5th November, 2024
nt

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No