



In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 19824 of 2024

Reserved On: 05.09.2024
Pronounced On: 10.09.2024

Sridam Anand

... Petitioner(s)

Versus

Chandigarh Administration and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Sheel Nagu, Chief Justice.
Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. D.S.Patwalia, Senior Advocate
with Mr. Kannan Malik, Advocate
for the petitioner(s).

Mr. Amit Jhanji, Senior Standing Counsel
with Mr. Sumeet Jain, Additional Standing Counsel,
Mr. Himanshu Arora and Ms. Eliza Gupta, Advocates
for respondent No.1 and 3.

Mr. Arun K. Bakshi, Advocate
for respondent No.2.

Mr. Abhilaksh Grover and Ms. Nandini Gupta, Advocates
for respondent No.4.

Anil Kshetarpal, J.

1. Introduction and Brief Facts

1.1 The challenge herein is to Clause A(6) of the prospectus issued by the Chandigarh Administration, for admission to MBBS course, whereby the definition and scope of the Foreign Indian Students (FIS) for the said purpose of admission has been restricted so as to exclude the relations of Non Resident Indians (NRI) from the ambit of FIS. In substance, the petitioner claims that a common prospectus has been issued, wherein the

criteria for admitting the FIS/Foreign Nationals/NRIs has been separately laid down for admission to MBBS course on one hand and BDS course on the other hand.

1.2 The petitioner aspires for admission to MBBS-2024 course in the Government Medical College and Hospital (GMCH) run by the Chandigarh Administration. The students are admitted after they have passed the National Eligibility-cum-Entrance Test (UG) 2024. The online prospectus was made available to the candidates on 09.08.2024. The last date for submission of the online applications form and fee was 16.08.2024 (Friday) by 5:30 P.M. This writ petition was filed on 13.08.2024. A common prospectus has been issued and published for admission to GMCH, Chandigarh, Dr. Harvansh Singh Judge Institute of Dental Sciences and Hospital, Chandigarh (Dental college) and the Homeopathic Medical College, Chandigarh (a private college). The relevant clauses of the prospectus read as under:-

A: MBBS COURSE

Institution: GOVERNMENT MEDICAL COLLEGE & HOSPITAL, SECTOR 32, CHANDIGARH.

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The distribution of these 150 seats will be as under:-

		Category	% Reservation	No. of Seats
1	All India Quota		15%	23*
2	Central Pool			03
3	Foreign Indian Student			09

XXXX XXXX XXXX XXXX XXXX

***A-6): Eligibility criteria and admission procedure for Foreign******Indian Student:***

1. *The Candidates must be of Indian origin. These seats are not open to foreign nationals who are of non-Indian origin.*
2. *Candidates must have claimed his/her eligibility for NRI/OCI category while applying for NEET (UG) -2024 examination.*
3. *The candidates meeting any of the following criteria will be eligible to apply for admission under this category:*
 - a. *Persons of Indian origin who are citizens of countries other than India and hold the passport of the country concerned.*
 - b. *Overseas Citizens of India.*
 - c. *Indian citizens (candidates) who have resided in a country other than India for a minimum period of three years Immediately preceding the year of admission in the Govt. Medical College and Hospital, Sector-32, Chandigarh.*

Explanation:

The aforesaid condition of residence for a minimum period of three years in a country other than India prescribed in clause (iii) above means actual/physical residence on a regular basis.

Notional, Deemed or constructive residence of any

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kind shall not be considered for this purpose. Accordingly, possession of a Green card/Permanent Resident Permit will ipso facto not confer eligibility or entitlement for admission. For compliance with this clause, the candidate should submit the certificates from the school(s) attended in a country other than India during the three years immediately preceding the year of admission as a regular student. If there is a gap between in the studies between the completion of 10+2 and year of application then the candidate must provide proof of actual residence abroad for three years immediately preceding the year of admission, in the form of a certificate issued from the Indian embassy/Consulate in that country that the candidate was residing in the concerned country (Foreign country) covering an actual period of 3 years.

- i. The expression "Overseas Citizens of India" in clauses (ii) above refers to persons registered as such under Section 7-A of the Citizenship Act, 1955 as amended up-to-date.*

- 4. Only NEET (UG) - 2024 qualified candidates can apply for admission against Foreign Indian Student category*



seats for admission year 2024.

5. *The candidates must have passed in the subjects of Physics, Chemistry, Biology/Bio- technology & English individually in the qualifying examination (equivalent to 12th standard) securing minimum percentage of 50% marks in the aggregate of Physics, Chemistry and Biology/Biotechnology.*

Important Note: *The candidates who have studied from the Foreign/International Board should ensure that the qualifying examination passed by them are, in scope and standard, as explained in CODE: 07 of the "Information Bulletin for National Eligibility cum Entrance Test (UG)- 2024 i.e, as under:*

Code 07: *Any other examination which in scope and standard (Last 02 years of 10+2 Study comprising of Physics, Chemistry and Biology/Biotechnology; which shall include practical test in these subjects) is found to be equivalent to the Intermediate Science Examination of an Indian University/Board, taking Physics, Chemistry and Biology/Bio-technology including practical tests in each of these subjects and English.*

Provided further that the students who have received education abroad and wish to seek admission into medical colleges in India must have passed in Physics, Chemistry, Biology/Bio-technology and English with



50% marks in Class 12 and their equivalency determined by Association of Indian Universities (AIU) as per regulations of the National Medical Commission AND the concerned University [i.e. Panjab University, Chandigarh.

6. *The candidate must provide the certificate of 10+2/pre-medical/of 10+2+3 system qualifying examination from any university/board showing detailed marks/explanation sheets of grade. The candidates must provide the percentage marks in Physics, Chemistry, Biology/Biotechnology as well as English of both Class 10+1 and 10+2 level.*
7. *Foreign Indian Student candidates who have passed 10+2 from CBSE/PSEB/HPSE/HSEB or any other Board/University of India, need not obtain eligibility and equivalence certificate from AIU or the Panjab University, Chandigarh.*
8. *Admission to Foreign Indian Student category seats will be conducted in accordance with the instructions/guidelines issued by the Chandigarh Administration from time to time. These candidates will be divided into two categories which are as follows:*

Category-1: *This category includes Foreign Indian Student candidates with ancestral background of Chandigarh. To be eligible for this category candidate*



should fulfill one of the following criteria:

- I. Grandparents/parents/ self should have been a resident of Chandigarh for a minimum period of 5 years at any time since the origin of Chandigarh.*
- II. Own/owned immovable property in the name of grandparents/parents/ self in Chandigarh for at least 5 years at any time since the origin of Chandigarh.*

A certificate to the effect of either of the above mentioned criteria is required from the office of the Deputy Commissioner, U.T., Chandigarh.

Category-II: *This category includes Foreign Indian Student candidates who have ancestral background of States/UTs other than UT Chandigarh.*

A certificate to this effect from competent Government authority i.e. office of the Deputy Commissioner from the district of that State or Union Territory or OCI Card has to be submitted.

Any other proof of ancestral background will NOT be accepted.

- 9. First preference will be given to Category-I candidates.*
- 10. If sufficient number of candidates under Category-I are eligible and available, then they will be admitted first even if candidates under Category-II are higher in merit.*
- 11. In case a seat under the Foreign Indian Student category*

remains vacant, the same shall be added to UT Chandigarh Pool General category and filled from combined merit list as per merit/rank in NEET (UG) – 2024.

12. All relevant clauses of **Counseling and Admission (Page No.11-15)** will be applicable to **Foreign Indian Student** category candidates.

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B: BDS COURSE

Institution: DR.HARVANSH SINGH JUDGE INSTITUTE OF DENTAL SCIENCES & HOSPITAL, SECTOR 25, CHANDIGARH-160014

B-1 and B-2 XXXX XXXX XXXX XXXX

		Category	% Reservation	No. of Seats
1	International/ NRI Students (See B-4): Eligibility Criteria for NRI Category)			15
2	Central Pool			05

XXXX XXXX XXXX XXXX XXXX

1. There is no UT pool for admission to BDS course. All seats are open to candidates from all over India except seats reserved for NRI Category.

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B-4): Eligibility Criteria for Foreign National / NRI Students
Only NEET (UG) - 2024 qualified (not less than 50th



percentile) candidates can apply for admission against NRI Category seats for admission year 2024.

A foreign national may seek admission in BDS being offered by the University through the International Students Office under any of the following categories-

- (i) Candidates with nomination / sponsorship by any foreign State, Embassy or authority in India under a Study in India / Exchange Programme, etc.*
- (ii) Foreign nationals or their wards who are self-financed students (not seeking admission through a mode as mentioned in (i) above).*
- (iii) Non-resident Indians or their Wards (not seeking admission through a mode as mentioned in (i) above).*

The definition of the terms, "Foreign Nationals, Non-resident Indians and Wards" be considered as under: -

- 1. **Foreign Nationals:** Foreign Nationals holding passports issued by foreign countries including people of Indian origin who have acquired the nationality of foreign countries are included as foreign students. Provided any subsequent changes in the definition as may be notified by the Government of India shall have the same latest meaning respectively assigned to them. The other expressions not defined herein shall have the meaning as may be assigned in any subsequent notification of the Government of India.*



2. *Non-resident Indians: A person shall be deemed to be Non-resident Indian for seeking admission in Panjab University if he/she fulfils the criterion (as amended from time to time) for status of NRI under Income Tax Act, 1961, in the year in which he/she seeks admission in Panjab University.*

As per Income Tax Act, 1961 the present criterion for determination of status of NRI is as follows:-

'Non-resident Indian' is an individual who is a citizen of India or a person of Indian origin and who is not a resident of India. Thus, in order to determine whether an Individual is a non-resident Indian or not, his residential status is required to be determined under Section 6. As per Section 6 of the Income-tax Act, an individual is said to be non-resident in India if he is not a resident in India and an individual is deemed to be resident in India in any previous year if he satisfies any of the following conditions:-

(i) *If he/she/others is in India for a period of 182 days or more during the previous year;*

or

(ii) *If he/she/others is in India for a period of 60 days or more during the previous year and 365 days or more during 4 years immediately preceding the previous year.*



However, condition No. (ii) does not apply where an individual being citizen of India or a person of Indian origin, who being outside India, comes on a visit to India during the previous year.

A person shall be deemed to be of Indian origin if he, or either of his parents or any of his parents or any of his grandparents, was born in undivided India.

3. Wards of Foreign Nationals and NRIs:

A student who seeks admission as a ward of Foreign National or Non-resident Indian should be in a first degree / blood relationship with foreign national or Non-resident Indian. The term first degree / blood relationship includes

- (a) spouse*
- (b) children (natural / adopted / foster)*
- (c) real brother and sister of father i.e. real uncle and real aunt*
- (d) real brother and sister of mother i.e. real maternal uncle and maternal aunt*
- (e) father and mother of father i.e. grandfather and grand-mother*
- (f) Father and mother of mother i.e. maternal grand-father and maternal grand-mother*
- (g) first degree-paternal and maternal cousins.*

Following documents are to be attached with the application:

- a. Affidavits and undertaking (Appendix J – I/II/III)*



b. *Photocopy of sponsor Passport*

Eligibility and Admission Criterion:

- (i) *The students who will be admitted against the NRI quota should have the basic qualification fixed by the Dental Council of India for admission in Dental courses.*
- (ii) *A candidate once admitted as NRI candidate in an undergraduate course shall be covered under the definition of NRI for subsequent admission to any course at Panjab University.*
- (ii) *Candidates who take admission under the NRI quota and are promoted from Undergraduate to Postgraduate course shall not be allowed to change their category.*
- (iv) *NRI candidates shall have to comply with any other requirements prescribed by the Govt. of India and Panjab University from time to time.*
- (v) ***The Foreign Nationals and NRI candidates shall provide the following certificates/documents:-***
 - (a) *The Foreign National and NRI students wishing to join BDS course of the Panjab University for the first time are required to obtain an eligibility certificate from the **Deputy Registrar (General), Panjab University, Chandigarh** or Academic Certificates of passing the qualifying or equivalent examination approved by the Association of Indian Universities (AIU)/ Commonwealth Universities/*



International Association of Universities (IAU) as equivalent to the corresponding Indian Degrees/ Certificates.

- (b) *The foreign students admitted are required to fill up Foreign Student Information System (FSIS) Form complete in all respects, along with copies of passport and Visa and submit to the office of Dean International Students, Panjab University, Chandigarh. This form is an urgent requirement of the Foreign Registration Office (FRO), Sector-9, Chandigarh and the candidate has to report to the Foreign Registration Office (FRO) within fourteen days of arrival in Chandigarh, with the number generated after the online submission of this form. Foreign Students Information System (FSIS) is to be submitted by hand by the candidate and the FSIS No. will be issued by this Office personally to the students.*
- (c) *Foreign Students Welfare Fee @ Rs.1500/- per student. Each NRI/Foreign Student is required to submit the same in cash, which may be deposited with the 'Extension Counter, State Bank of India, Administrative Block, Panjab University, Chandigarh. Original Receipts of the fee deposited is to be submitted to the office of the Dean*



International Students along with Registration Form (To be submitted after Confirmation of Admission).”

2. Submissions made by the Learned Counsels representing the parties

2.1 The petitioners’ counsel has made the following submissions:-

- I) Though the admission form is common, there is discrimination amongst the students to be admitted under 15% reservation for the NRI candidates in two different courses namely MBBS and BDS. He submits that there is no plausible justification for providing different requirements for admission to MBBS course and BDS course in the NRI category.
- II) The wards of the NRIs are eligible to be admitted in BDS course, whereas they have been excluded in the MBBS course, though both the colleges are being run by the Chandigarh Administration.
- III) The Chandigarh Administration has no power to exclude the wards of NRIs from the definition of FIS, as List No. 1, Entry No. 66 of the 7th Schedule of the Constitution of India under which the Union of India through NMC has defined 'NRI' shall override the State's definition of NRI under Entry No. 25 of List III. He placed reliance on the judgment of the Constitutional Bench of the Supreme Court in *Preeti Srivastava (Dr.) and Another v. State of*



Madhya Pradesh and Others (1999) 7 SCC 120.

2.2 Per contra, the respondents' counsel have submitted that GMCH, Chandigarh, is a separate college which imparts education in MBBS course and it is only an affiliate of Panjab University. Whereas the Dental College, Chandigarh, for BDS course, is also a distinct college and is constituent of the Panjab University located at a separate location from GMCH. It is submitted that norms with respect to admission to BDS course in 15% quota for FIS/NRIs has been prescribed as per the norms followed by the Panjab University. They further submit that as per the note appended to the procedure for filing an application form and deposit of fee online, the candidates were required to bring separate set of online submitted application form for each course applied for at the time of counselling. They further submit that the petitioner sat in the NEET examination while claiming his nationality as "Indian" and he obtained 379 marks. As per Clause (9), the first preference will be given to the candidates falling in category (1). It is further submitted that the Chandigarh Administration has taken a policy decision to restrict the scope of admission of the students to the MBBS course only to FIS who fulfils the requisite criteria. It falls in the realm of the policy decision and thus, the scope of judicial review is limited.

3. Analysis

3.1 Heard the learned counsel representing the parties, this Bench is of the considered view that the petitioner does not deserve indulgence on the following grounds:-

- i) Though a common prospectus has been issued by the Chandigarh Administration with respect to the admission



in GMCH, Chandigarh, HSJIDSH, Chandigarh and HMCH, Chandigarh, however, these three colleges are separate and distinct. There is no common thread between these three colleges except that the GMCH and HSJIDSH are the government colleges. As explained, the GMCH is only an affiliate of Panjab University, Chandigarh, for the grant of degrees, whereas the HSJIDSH (Dental College) is a constituent college of the Panjab University. Hence, the issuance of a common prospectus cannot be the sole reason to hold that the criteria for admitting the FIS/NRIs should be identical.

- ii) In *P.A. Inamdar and Others v. State of Maharashtra and Others (2005) 6 SCC 537*, the Supreme Court has observed that more often than not the admission under the NRI category is misnomer. The reservation under this category is amenable to abuse by less meritorious students who can afford to pay a huge fee. From time to time the Courts have been adversely commented upon the admission to this category. In this case, for the purpose of admission to MBBS course, a policy decision has been taken by the Chandigarh Administration to restrict the entry of the candidates while laying down a narrow eligibility criteria for FIS. The decision of the government to exclude the blood relations of the NRIs is to allow entry of those FIS who have genuinely resided



in the country other than India. This is a conscious decision taken by the Administration, which is in the form of a Policy. The scope of interference in such policy decision in exercise of the powers of the judicial review is extremely limited. Moreover, the petitioner has failed to draw the attention of the Court to violation of any provision of the Constitution or the Statute. Hence, this Bench also does not find that the distinction between the FIS for the purpose of admission to MBBS course and FIS/NRI students for the purpose of admission to BDS course is discriminatory as both the colleges are not only separate but even the courses taught in the colleges are distinct.

- iii) The reliance placed by the petitioner's counsel upon the judgment passed in *Preeti Srivastava's case (supra)* is misplaced. In that case, the Supreme Court only examined the requirement of prescribing minimum percentage of qualifying marks for the reserved category. While interpreting the Entry No. 25 of List 1 of Schedule VII of the Constitution, the Supreme Court held that laying down the norms of admission have connection with the standard of education. However, in this case, the Chandigarh Administration is admitting the students under the State quota which is 85%. The Seventh Schedule of the Constitution consists of three lists. List I



is the Union List, whereas List II is the State List, whereas List III is the concurrent List. While explaining the difference and the scope of Article 66 of List I and Entry No. 25 of List III, the Supreme Court in *Modern Dental College and Research Centre and Others v. State of Madhya Pradesh and Others (2016) 8 SCC 353*, held that the State's power to regulate the admission to State quota in a technical education is not curtailed till there is no interference in coordination and determination of standards of the institutions by the State which is covered by Entry No. 66 of List I. Similarly, while examining the interplay between the aforesaid two entries, another Constitutional Bench of the Supreme Court in *Tamil Nadu Medical Officers' Association and Others vs. Union of India and Others (2021) 6 SCC 568*, explained that *Preeti Srivastava's case (supra)* examines laying down of the norms of admissions which have connections with the standard of education. The Court held that prescribing the minimum percentage of qualifying marks for the reserved category is not within the domain of State. In fact, all the Five Judges of the Bench have signed two concurrent opinions. Para 51 and 52 of the opinion authored by Justice Bose is extracted as under:-



question of prescribing minimum percentage of qualifying marks for the reserved category candidates (with reference to Article 15(4) of the Constitution of India). As regards the respective powers of the State and the Union to legislate in the field of education, it was held:

"35. The legislative competence of Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, List II Entry 11 gave to the State an exclusive power to legislate on "education including universities, subject to the provisions of List I Entries 63, 64, 65 and 66 and List II Entry 25."

List II Entry 11 was deleted and Entry 25 of List III was amended with effect from 3-1-1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:

"25. Education, including technical education, medical education and universities, subject to the provisions of List I Entries 63, 64, 65 and 66; vocational and technical training of labour."



Entry 25 is subject, inter alia, to List I Entry 66.

List I Entry 66 is as follows:

"66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to List I Entry 66 which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under List I Entry 66. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter



alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254."

52. *On the aspect of laying down norms for admission, it was held in the case of Dr. Preeti Srivastava (supra):*

"36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by List III Entry 25. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under List I Entry 66. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under List I Entry 66. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:



- (1) *the caliber of the teaching staff;*
 - (2) *a proper syllabus designed to achieve a high level of education in the given span of time;*
 - (3) *the student-teacher ratio;*
 - (4) *the ratio between the students and the hospital beds available to each student;*
 - (5) *the calibre of the students admitted to the institution;*
 - (6) *equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;*
 - (7) *adequate accommodation for the college and the attached hospital; and*
 - (8) *the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged."*
- iv) Similarly, reliance placed by Mr. Patwalia on Section 46 of the National Medical Commission Act, 2019, lacks substance because the Central Government's power to give directions to the State Government shall be confined to the scope of Entry No. 66 of List I. Entry No. 25 of List III do enable the State Government to make laws with respect to the education including technical education, medical education and the universities, subject to the provisions of the Entry No. 63, 64, 65 and 66 of



List I. The reservation of seats in the State quota is not covered by Entry No. 66. This has been explained in *Modern Dental College and Research Centre's case (supra)* and *Tamil Nadu Medical Officers' Association's case (supra)*. Hence, reliance on *Preeti Srivastava's case (supra)* is misplaced.

It would be noted here that the similar question was also previously considered by the Division Bench of this Court in *Anchal Setia v. Chandigarh Administration and Others AIR ONLINE 2020 P and H 1215*. The Division Bench held that the courses being run by two distinct colleges are totally different and they are entitled to lay down their own definition of NRI.

4. Decision

4.1 For the reasons recorded above, no ground is made out to quash Clause A(6) of the prospectus issued by the Union Territory, Chandigarh. Hence, the present writ petition is dismissed.

(Anil Kshetarpal)
Judge

(Sheel Nagu)
Chief Justice

September 10, 2024
“DK”

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