



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1) CWP No.20041 of 2024(O&M)
Reserved on: 03.09.2024
Date of Order: 10.09.2024

Devbir Singh
..Petitioner
Versus

State of Punjab and others
..Respondents

(2) CWP No.20788 of 2024(O&M)
Reserved on: 04.09.2024

Geetan Verma and others
..Petitioners
Versus

State of Punjab and others
..Respondents

(3) CWP No.21790 of 2024(O&M)
Reserved on: 04.09.2024

Anam Bhangoo
..Petitioner
Versus

State of Punjab and another
..Respondents

(4) CWP No.22101 of 2024(O&M)
Reserved on: 04.09.2024

Manleen Kaur
..Petitioner
Versus

State of Punjab and others
..Respondents

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



Mr. Ritesh Aggarwal, Advocate
Ms. Alisha Sharda, Advocate
for the petitioner (in CWP-20041 of 2024)
for respondent no.6 to 18 (in CWP-20788 of 2024).

Mr. Amit Jhanji, Senior Advocate, with
Mr. Kunal Mulwani, Advocate,
Mr. Ritvik Garg, Advocate and
Ms. Eliza Gupta, Advocate
for the petitioners (in 20788 of 2024)

Mr. Ghulam Nabi Malik, Advocate
for the petitioner (in CWP-21790 of 2024)

Mr. Punit Jain, Advocate
for the petitioner (in CWP-22101 of 2024)

Mr. Gurminder Singh, Advocate General, Punjab
Mr. Saurav Khurana, Addl. Advocate General, Punjab
Mr. Anurag Chopra, Addl. Advocate General, Punjab.

Mr. Nitin Kaushal, Advocate and
Mr. Sahil, Advocate, for Baba Farid University.

Mr. Shailesh Aggarwal, Advocate
for respondent-Dr. Ambedkar University.

Mr. Anand Chhibbar, Senior Advocate, with
Ms. Shreya B. Sarin, Advocate
for the applicant-Ms. Sehar Sandhu
(in CM-14173-2024 in CWP-20788 of 2024)

Mr. A.P.S.Sandhu, Advocate
for the applicant-Ms. Rupinder Kaur Sahi
(in CM-14046-2024 in CWP-202788 of 2024).

ANIL KSHETARPAL, JUDGE

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1. **FACTUAL BACKGROUND**

1.1 With the consent of the learned counsel representing the parties, this order shall dispose of four connected Civil Writ Petition Nos.20041, 20788, 21790 and 22101 of 2024.

1.2 In the matter at hand, the following question has arisen for adjudication:-

“If in accordance with the State Government's policy, a 15% reservation for genuine NRI is provided in the prospectus for admission to a professional course, whether a subsequent decision to include non-genuine NRIs after the deadline for submitting admission forms is sustainable?”



1.3 The common issue in these four writ petitions relates to admission in MBBS-2024 Course under the 15% quota reserved for Non Resident Indian (NRI) within State quota (85%) in the State of Punjab. After the result of NEET(UG)-2024 was declared on 26.07.2024, the work of filling up 85% seats was assigned by the State of Punjab to Baba Farid University of Health Sciences(BFUHS) which issued prospectus on 09.08.2024. The following schedule was notified by the University:-

**“SCHEDULE FOR ADMISSION UNDER NEET UG-2024
IMPORTANT DATES**

1.	Availability of prospectus on University website www.bfuhs.ac.in	09.08.2024
2.	Last date for applying online Admission Application Form through University Website	15.08.2024
3.	Last date for depositing fee of Rs.5000+18% GST (Rs.5900/-) & Rs.2500+18% GST (Rs.2950/- for SC candidates through Online payment gateway	16.08.2024
4.	Sports Category Candidates <u>will submit printed/hard copy of online submitted form personally (by hand)</u> in the University along with Sports Gradation Certificate issued by the Director, Sports, Punjab and others supporting self-attested copies of certificates/documents	16.08.2024
	Note: Persons with Disability-PWD (Category Code 16)-shall produce Disability Certificate (as per prospectus Page No.35) duly issued by the Designated Centred(s) as informed by DGHS, New Delhi to the Principal at the time of reporting in the provisionally allotted college.	
5(i)	Verification for eligibility of Christian Minority Quota Candidates for admission to MBBS/BDS Courses, sessions 2024 will be conducted at the following venue: Christian Minority-At Christian	09.08.2024 to 17.08.2024



	Medical College, Ludhiana.	
5(ii)	Verification for eligibility of Sikh Minority Quota Candidates for admission to MBBS/BDS Courses, sessions 2024 will be conducted at the following venue:- Sikh Minority -At SGRD Institute of Medical Sciences & Research, Amritsar.	16.08.2024 to 18.08.2024
Note: Candidates who have applied under Sikh/Christian Minority Quota must report to the respective Institute(s) as cited in para 5(i) & 5(ii) above alongwith all original certificates/documents including document in support of claim under Minority Quota as per rules/notification otherwise you will not be able to fill the Choices/preferences of concerned minority quota seats.		
	FOR NRI CANDIDATES	
6.	Last date for submitting physical application form for NRI quota (Application form for Eligibility Certificate and admission application form for NRI candidates is separately available on University website i.e. www.bfuhs.ac.in)	19.08.2024
7.	Display of Provisional Merit List of Candidates	Upto 20.08.2024
8	Last date for submission of objections in Provisional Merit List (if any) by the NEET UG aspirants. Note: Objections can be submitted only by personal appearance/visit along with relevant documents/record in Admission Branch, BFUHS, Faridkot.	21.08.2024 (Upto 05:00 PM)
9.	In case there is any change in Provisional Merit List after considering objections, the same will be displayed through university website on	Upto 23.08.2024

The Schedule for 1st Round of Online Counselling

1.	Choice filling for 1 st Round of Online Counselling	10.08.2024 to 24.08.2024
2.	Processing of Seat Allotment	25.08.2024 to 27.08.2024
3.	Display of Result	28.08.2024
4.	Last date for submission of objections in Provisional Allotment List (if any) by the NEET UG aspirants. Note: Objections	29.08.2024 (Upto 04:00 PM)



	can be submitted only by personal appearance/visit along with relevant documents/record in Admission Branch, BFUHS, Faridkot. <u>Objections received through email will not be accepted.</u>	
5.	In case there is any change in provisional allotment after considering objections, the same will be displayed through University website on	30.08.2024
6.	Physical Reporting by candidates to the respective provisionally allotted colleges and deposition of six months tuition fee through University Payment Gateway available on the University website in Student Login	31.08.2024 to 05.09.2024.

1.4 For the purpose of decision of the present case, the following notes/clauses of the prospectus are considered relevant:-

*“**Note-1:-** Any subsequent Notification /Notice /Amendments /Corrigendum's issued by the Govt. of Punjab/University will be followed in letter and spirit. For any update visit University website regularly.”*

PART-A

GENERAL INSTRUCTIONS (PLEASE READ IN DETAIL)

“3. This prospectus is subject to alteration(s)/modification(s) at any time without notice. Please visit University website from time to time. Admissions including Eligibility to MBBS/BDS Courses shall be governed and regulated as per the rules and regulations etc., as per Punjab Govt. notifications.

4. Instructions in this prospectus are liable to change



based on decision(s) taken by the Punjab Government/University/Govt. Of India/MCC from time to time. There is no equity or any rights that are/or deemed to be arising in favour of candidate.

5. The candidate should read the eligibility condition carefully. Mere submission of application for admission/counselling does not entitle him/her for admission. Eligibility conditions for admissions are given in the Notification. The eligibility shall be determine by the Selection Committee/Principal of concerned college at the time of counselling/admission. Those who are not eligible as per Punjab Govt. notification will not be considered for admission. Eligibility is also subject to medical fitness and such cirteria as may be prescribed by the Punjab Government/University/Medical institutions/National Medical Commission/Dental Council of India.

9. Distribution of seats will be as per Punjab Govt. Notification, the list of eligible colleges/seats may increase/decrease, subject to the orders of Hon'ble Courts/NMC/DCI/Govt. The final position of seats will be displayed at the time of counselling.

*23. **Instructions for NRI Candidates only:-** Candidates who wants to apply under NRI quota seats, have to obtain provisional Eligibility/equivalency certificate from*



BFUHS, Faridkot and will have to qualify NEET-UG-2024 and candidates will apply on prescribed proforma available on website along with prescribed fee for seats under NRI quota.”

“Step-I SUBMISSION OF ONLINE ADMISSION APPLICATION FORM

“9. Candidate shall submit online ADMISSION APPLICATION FORM only once. Applications submitted more than once are liable to be rejected.

13. After the last date for applying online application form, it will get locked automatically. Thereafter, no change (regarding any particulars) can be made and no request/application will be considered/accepted, in this regard.

14. Fill category carefully in the online Admission Application form. Category once claimed will not be changed in any case after submitting the form.

Those candidates, who do not fill/claim any category code as per prospectus or fill a wrong category code other than mentioned in prospectus, will be treated in Open merit. The candidate may select a category code from the codes given below and fill the category accordingly. More than one category may be filled by a candidate if it is considered applicable in the candidate's particular case. Category codes are exclusively for the purpose of facilitating the candidates to know and understand his/her respective merit placement at the time of counseling in various reserved categories as have been



filled by him/her. Reserve category selection on the part of the candidate shall not in any case be construed to give him/her any legitimacy or right or claim on the benefits for reserved seats during admission. Claims to admissions against reserved seats in MBBS/BDS courses will be on the basis of appropriate claims made in the Admission Application Form subject to rules and regulations contained in the Punjab Government Notifications printed in the Part-B of this prospectus and as per the decisions of the Selection Committee constituted for this purpose by the Punjab Government. No benefit of reservation whatsoever shall be given if the claim is not made in Admission Application Form.

17. Non-Resident Indian (NRI) SEATS

15% seats in all Private Institutes/Guru Gobind Singh Medical College Faridkot and 13 seats each in Govt. Medical College, Patiala and Amritsar and 3 seats in Govt. Dental College, Amritsar and 4 seats in Govt. Dental College, Patiala shall be earmarked for the Non-Resident Indians in the following order:

Category I: NRI/Children of NRI who originally belong to the State of Punjab. Category II: NRI/Children of NRI who originally belong to an Indian State other than Punjab.

(i) Under this policy Non Resident Indian means a person of Indian origin, whether holding an Indian Passport or Foreign Passport, who is either permanently or temporarily settled outside India and in either case:

(i) for or on taking up employment outside India; or

(ii) for carrying on a business or vocation outside India, or

(iii) for any other purpose, in such circumstances, as



would indicate his intention to stay outside India for an uncertain period; For ascertaining the eligibility relevant documents including Foreign Country Passport or Green Card or Permanent Resident Card or Proof of Residency of Foreign country issued by competent authority or OCI/PIO Card issued by the Government of India shall be taken into consideration.

(ii) The eligibility of the candidates shall be determined by the Baba Farid University of Health Sciences, Faridkot, who shall issue an eligibility certificate to each such candidate.

(iii) The fee notified for NRI category shall be applicable to NRI candidates getting admission to Govt. Medical/Dental Colleges also.

(iv) The NRI students shall have to give a bank guarantee/surety bond for the balance of fee, if they opt to pay the fee in installments as provided.

(v) The Centralized Counselling of NRI quota seats shall be held before the Counselling for other categories. In case of any seat remaining vacant under NRI quota, during / after 2nd Centralized Counselling of NRI quota in State Colleges, it shall go to General category and in the Private Colleges/Minority colleges shall go to General Category of the Management/Minority quota. The NRI left over seats shall be filled by the sme Admission Committee from amonst the eligible candidates of NEET.

(vi) OCI/PIO candidates shall be considered only for 15% NRI Quota seats.

20. GENERAL CONDITIONS:-

j) Guidelines of MCC shall be followed and referred to, from time to time in the process of counselling.

21. The State Government reserves the right to amend



any clause and procedure for admission.”

1.5 On 20.08.2024, the following corrigendum was issued substituting the relevant clause with respect to scope and ambit of students who are entitled to be considered for NRI seats:-

“Modified Provisions

1. For admission under the NRI quota/NRI category seats, preference be given according to the following order:

a. Actual NRIs candidates who originally belonged to the State of Punjab.

b. Children of NRIs who originally belonged to Punjab State.

c. Actual NRIs who originally belonged to an Indian State or Union Territories other than Punjab

d. Children of NRIs who originally belonged to an Indian State or Union Territories other than Punjab.

e. If in case the seats of NRI's are left vacant after considering the above preferences (a-d) then the candidates who is the Ward/Nearest relation of NRI shall also be considered under NRI quota seats:-

The degree of relation with NRI will be considered as per the following orders of preference mentioned as under:-

I. He/she shall be in the nearest relation.

II. In the definition of nearest relation, following



relation having blood relations will be considered:-

a) Real Brother and sister of father i.e. real uncle and real aunt.

b) Real brother and sister of mother i.e real maternal uncle and maternal aunt.

c) Father and mother of father i.e grandfather and grandmother.

d) Father and mother or mother i.e maternal grandfather and maternal grandmother.

e) First degree-paternal and maternal cousins.

f) Such persons should be NRI.

III. Such persons should ordinarily be residing abroad.

IV. Such person should have looked after such student as the guardian of the student and evidence to that effect must have been produced before the Committee by such person in the form of an affidavit duly verified by the competent authority.

Note:-

. Any seats remaining vacant under NRI category after the second round of counselling shall go to the NEET qualified eligible foreign national. However, if the seats still remain vacant these shall be converted to general category seats in the Government/Government Aided Colleges and Management Category seats in the Private colleges.



. The fee of the NRI candidate shall only be accepted from NRI/NRE bank account.”

1.6 This was followed by an addendum on 22.08.2024, which reads as under:-

“ After partial modification in Para-17 of Notification dated 09.08.2024

15% seats in all Private Institutes/Guru Gobind Singh Medical College Faridkot/Dr. B.R.Ambedkar State Institute of Medical Sciences (AIMS Mohali) and 13 seats each in Govt. Medical College, Patiala and Amritsar and 3 seats in Govt. Dental College, Amritsar and 4 seats in Govt. Dental College, Patiala shall be earmarked for the Non-Resident Indians in the following order:”

1.7 As per the State's reply, the provisional merit list of NRI candidates (original NRI) was prepared on 22.08.2024, whereas on 23.08.2024, the list of sponsored NRI candidates was finalized, however, in view of interim order passed on 28.08.2024, the same has not been uploaded.

1.8 While praying for reading down the definition/description of Non Resident Indian as provided under Clause 17 of notification dated 09.08.2024, CWP No.20041 of 2024 was filed on 14.08.2024, in which notice of motion was issued and as an interim measure the petitioner-Devbir Singh was permitted to provisionally appear in counselling, however, result of counselling qua the petitioner shall not be disclosed without leave of the court. It was clarified that the petitioner shall not derive any equity from this



order.

1.9 The General Category aspirants (GCA) filed Civil Writ Petition No.20788 of 2024, on 23.08.2024, questioning the correctness of corrigendum and addendum issued on 20.08.2024 and 22.08.2024, which came up for hearing on 27.08.2024, however, adjourned to next day i.e. 28.08.2024. After hearing the learned counsel for the rival parties, the operation of corrigendum dated 20.08.2024 and 22.08.2024 was stayed and the process of admission was directed to be continued in accordance with the schedule as per original prospectus MBBS/BDS 2024.

1.10 During the pendency of the CWP No.20788 of 2024, as many as 15 Non Resident Indians who are expected to be beneficiaries of the corrigendum and addendum have become a party to the writ petition. They have been heard.

1.11 CWP Nos.21790 and 22101 of 2024, have been filed by the candidates who want to take benefit of the expanded scope of admission in NRIs category. However, their grievance is that insufficient time was provided for completing the formalities while contending that the corrigendum was issued late in the evening on 20.08.2024 and in the matter of one day i.e. on 21.08.2024, the candidates were directed to submit the following documents:-

- “1. Consulate General Embassy Certificate of NRI*
- 2. Passport/PR Card/Green Card of NRI*
- 3. Undertaking of Grand Parent/Parent showing **Family Tree** (Kursinama) in original (Attested by Notary)*
- 4. Copy of NRI Certification by sponsoring*



*person(Attestation from Notary Abroad/consulate
General of India)*

*5. Relationship declaration by NRI with applicant.
(Attestation form Notary Abroad/Consulate General of
India)*

*6. Undertaking by NRI that he/she willing to sponsor the
applicant. (Attestation from Notary Abroad/Consulate
General of India)*

7. NEET Score card.

8. 2 passport size photos of Applicant.

*9. Address proof of NRI (Driving License/Bank passbook,
lease agreement etc.)”*

2. **SUBMISSIONS:-**

2.1 Sh. Amit Jhanji, the learned senior counsel representing the general category candidates contends that the corrigendum dated 20.08.2024, has been issued after the last date (19.08.2024) for submission of application by the students seeking admission in NRI category had come to an end. Once the last date for submitting the application forms was over, the issuance of corrigendum has resulted in changing the rules of admission midway after the admission had begun was not appropriate. He submits that in order to divert the seats which would have otherwise come to GCA, in case of vacancy, as per clause 17(v) of the prospectus, the corrigendum has been issued by modifying and expanding the scope of category of NRI or their children. While referring to the various judgments including **P.A.**

Inamdar & Ors vs State of Maharashtra & Ors, (2005) 6 SCC 537, he



submits that despite clear observations of the Supreme Court, the State Government in order to deprive the GCAs, who are meritorious has arbitrarily and illegally issued corrigendum and addendum. He also drew attention of the court to the addendum issued on 22.08.2024, wherein 15% seats in Dr. B.R.Ambedkar State Institute of Medical Sciences have been added for the first time. He further submits that out of 19 candidates, who are sought to be admitted under the expanded scope of NRI seats, 15 candidates had previously applied only in the general category. He while referring to para 6 and 7 of the State's reply, submits that the State of Punjab has failed to offer any plausible explanation that justifies the modification of the provision and the issuance of addendum, which reads as under:-

“6. That as per the admission schedule, the last date for submitting the physical application form for the NRI quota seats was 19.08.2024. The definition of NRI category as mentioned in Clause 17 of the Notification dated 09.08.2024 was clarified by way of Corrigendum in order to comply with the judgment of the Hon'ble Supreme Court in order to fill the seats of NRI quota in its true intent and purpose. Thus, its not anything new laid down by way of corrigendum, rather the already settled position of law has been reiterated and clarified in the corrigendum. The said corrigendum dated 20.08.2024 was issued on the basis of the various suggestions/representations from the students that the NRI quota has been defined by various State



Governments including State of Rajasthan, Haryana, Himachal Pradesh, Chandigarh and Puducherry and has also been noticed by the Hon'ble Supreme Court in its Consortium of Deemed Universities in Karnataka and another versus Union of India and others. The corrigendum stood issued to ensure level playing field to the NRI candidates and also to ensure that the rights of the NRI candidates are not infringed on the basis of clause in the notification. Copy of the relevant clause of NRI category in State of Haryana, U.T. Chandigarh, Himachal Pradesh are annexed herewith as Annexure R-1.

7. That before issuing corrigendum to the existing policy of NRI, legal opinion from Department of Legal and Legislative affairs Punjab and Advocate General, Punjab was taken. After their approval the process of issuing the corrigendum was initiated. The provision regarding NRI was amended after approval from the competent authority.”

2.2 Per contra, Sh. Gurminder Singh, learned AG, Punjab, Sh. D.S.Patwalia, Sh. Anand Chhiber, learned Senior Advocates and various other counsels representing the private respondents have submitted that there is huge population of NRIs from Punjab, who are settled abroad, but they have their roots connected to their motherland. They asserted that even the prospectus issued by the Union of India and other neighbouring States gives



a vast definition of NRI category and hence the modification is not violative of law. Moreover, the GCA have no locus standi because there is no change in the 15% seats allocated to the category of NRIs. It is submitted that neither any receipt of capitation fee has been allowed nor there is any profiteering made out of the NRI seats. To set off the subsidized government quota seats, policy decision to widen the scope of admissions under NRI category has been taken while extending the last date for submitting the physical application forms by the NRIs to 21.08.2024. It is also submitted that the modified criteria is restricted to NRIs, their children, wards/nearest relations and hence the seats are not for sale or money making purposes. The learned counsel also disclosed that on 27.08.2017, 117 NRI students were identified for selection but they have not been impleaded as a party. Hence, the writ petition is liable to be dismissed on non-joinder of necessary parties.

2.3 In addition, Sh. D.S.Patwalia, while referring to **P.A.Inamdar's case (supra)** contends that the judgment itself gives absolute discretion to the management to fill up 15% NRI quota seats. The GCA have no vested right in these 15% seats, and the writ petition has been filed in anticipation is not maintainable. This court is expected to maintain a delicate balance between equity and law and if the writ petition is allowed, 117 NRIs would not get admission, whereas the GCA will get the management quota seats and the NRI students have already submitted their testimonials. He also asserts that there is a fundamental flaw in the argument of the GCA because the corrigendum and the addendum are only clarificatory in nature which results in the correction of an error which is



permissible. The learned counsel also contended that it was the State's bounden duty to bring the definition of 'NRI' in State of Punjab at par with the definition of 'NRI' defined in the brochure issued by MCC. It is also contended that the category of NRI in Punjab is required at par with the category of NRI defined in brochure issued by the MMC. In the end, he submitted that this court should not delve deeper into the issue because it is academic and in any case the general category candidates will get admission in the management quota seats.

2.4 Sh. Anand Chhibbar, learned senior advocate has submitted that the State has enabling power to amend the prospectus which has been duly exercised. Mr. Kaushal, the learned counsel representing the University while adopting the arguments of AG, Punjab, has submitted that the corrigendum results in clarification and it has not made any fundamental changes in the prospectus.

2.5 Sh. Shailesh Aggarwal, the learned counsel representing Dr. B.R.Ambedkar State Institute of Medical Sciences has submitted that 15% seats out of State quota have correctly been allocated to the Institute at par with other institutes.

2.6 In re-joinder, the GCA's submits that the brochure issued by the NMC is with respect to the 'all India quota' seats. He submits that the State of Punjab has acted malafidely in order to help the influential persons and the private medical colleges.

2.7 Sh. D.S.Patwalia, learned senior advocate has also filed a written note of his submissions.

3. ANALYSIS AND DISUCSSION



I. **NON-JOINDER OF NECESSARY PARTIES**

3.1 It may be noted here that as many as 16 NRI beneficiaries have themselves become a party to the petition filed by the GCA. Mr. Devbir Singh, the petitioner, in the Civil Writ Petition No.22041 of 2024, is also represented. Thus, in substance, 17 candidates have been heard. The AG, Punjab, while appearing on behalf of the State of Punjab has himself come forward to oppose the claim of the GCA. In all, as many as three learned senior counsels have been heard.

3.2 In para 51 of **Ajay Kumar Shukla and others vs. Arvind Rai and others, (2022) 12 SCC 579**, as well as in para 81 of **Mukul Kumar Tyagi and others vs. The State of Uttar Pradesh and others (2020) 4 SCC 86**, the Supreme Court held that the impleadment of a few affected parties would be sufficient compliance of principles of natural justice particularly when their interest is common and they would be deemed to represent interest of all the affected parties. Moreover, in such cases, the time is of the essence. At times, even a single day's delay can prove fatal, because it can result in irreversible consequences. The State of Punjab and University have disclosed in their separate replies for the first time, that 117 aspirants pursuant to expended scope of NRI category have participated in the counselling. Their names have not been disclosed by the University's counsel but he admits that the University had not declared the provisional allotment of NRI seats in view of interim order. It becomes clear that due to non-announcement of the results of counselling, as of now, 117 students have not been allocated colleges, and therefore, they have not been granted admission in the MBBS course. Hence, the question of non-joinder of



necessary parties does not arise. There is no delay in filing the writ petition by the GCAs as the corrigendum and addendum were issued on 20.08.2024 and 22.08.2024, whereas the writ petition was filed on 23.08.2024. Moreover, 117 candidates as per State of Punjab's reply have been permitted to participate in the counselling during the pendency of the writ petition, hence, their right to secure admission in the institute on the basis of 'NRI Quota' is subject to the rule of lis-pendens.

3.3 From the foregoing discussion, the objection with respect to the non-joinder of parties is rejected.

II. LOCUS-STANDI OF PETITIONERS

3.4 The next objection of the respondent's counsel is with respect to GCA's locus-standi. The Clause 17(v) provides that the seats remaining vacant under NRI quota during/after second counselling of NRI quota in State colleges, will convert to open/General Category Seats of counselling. Hence, GCA have locus to maintain the writ petition.

III. VESTED RIGHT OF CANDIDATES BELONGING TO GENERAL CATEGORIES(GC)

3.5 Similarly, the argument of Sh. Patwalia, that the petitioners do not have a vested right lacks merit. The GCAs are entitled to be considered for the vacant seats allocated for NRI quota as per the original clause 17(v) of the prospectus. Their right for consideration against the aforesaid seats is based upon legitimate expectation as per the propsectus. They may not have a vested right of getting the admission, however, they do have a right of being considered fairly.

IV. MANAGEMENT QUOTA SEATS.



3.6 It is crucial to understand that a lot of meritorious students in the category of GCA, may not have the financial capacity to pay for the management quota seats. The difference between the fee structures prevailing in the government colleges and the private colleges is extensive. In the private colleges, the seats are divided in three categories. The fee structure for first year in Government Medical Institution/Government Society is Rs.1,83,000/-, whereas in Private Institutes/Universities (under government quota) which is 50%, the fee for the first year is Rs.4,26,000/-. In private institutions/universities, the management quota fee for the first year is Rs.10,94,000/-, whereas, 15% NRI quota in MBBS in Government/private medical institutes/colleges is \$1,10,000/-. Moreover, the meritorious candidates are required to be preferred particularly when the unamended prospectus makes a provision.

V. TERM 'WARD' EXPOUNDED

3.7 The Gujarat High Court while examining the scope of the word 'ward' in *Chandibhamar Abhey Sanjaykumar vs. The State of Gujarat and others, (2024) 1 GLR 447* has observed in the following manner:-

14. As noticed hereinabove, it would appear that while carving out reservation to the extent of 15% for admission to medical colleges in favour of the NRIs, the Hon'ble Apex Court was concerned with a situation where under the guise of admission to NRI seats, admission was granted to students who were neither NRIs nor their parents were NRIs. It is in context of such a concerned that the Hon'ble Apex Court had observed



that the seats in the State quota should be given only to bona fide NRIs or their children or wards. In the humble opinion of this Court, seeking to widen the scope of the term 'ward' beyond the term, would be doing violence to the spirit of the observations of the Hon'ble Apex Court while carving out reservation for NRIs.

15. The term 'ward' in its most elementary meaning as per the Oxford Dictionary would mean 'a child who is under the protection of a court of law, a child whose parents are dead and who is cared for by another adult (guardian)'. The Blacks Law Dictionary defines the word 'ward', as 'a person, usually minor, who is under a guardian's charge or protection'. In the considered opinion of this Court, the word 'ward' used by the Hon'ble Apex Court, has to be appreciated in the context of the normal-elementary meaning of the term 'ward' read with the spirit of the observations as referred to hereinabove. The Hon'ble Apex Court inter alia observed and has used the word 'ward' in the first condition whereby the Hon'ble Apex Court inter alia lays down that the seats should be utilized by genuine NRIs only for their children or wards. Thus, the idea was to ensure that in addition to the children of NRIs, if a child is a ward of a bona fide NRI, he should also be entitled to get the benefit of admission in NRI seats. Thus, in the considered



opinion of this Court, the word 'ward' appearing in the decision of the Hon'ble Apex Court in case of [P.A. Inamdar](#) (supra), has to be viewed as describing a minor who is in the guardianship of a NRI. Furthermore, it would be relevant to observe that while [the said decision](#) itself envisages legislation to be framed, more particularly 'to prevent misutilization or malpractice referable to NRI Quota Seats' and therefore in the considered opinion of this Court, the word 'ward' used in the context of the legislation could also not extend beyond the plain meaning ascribed to the term. Again, in context of legislation, more particularly since the word 'ward' envisages a minor who is under the protection of an adult, the law which regulates such guardianship in the country being the [Guardians and Wards Act](#), therefore the definition of the term 'ward' has rightly been attributed the same definition as found in the legislation governing such a relationship.”

VI. BALANCING OF THE EQUITIES:-

3.8 The next argument of Mr. Patwalia is that the court is required to maintain a delicate balance between equity and law. In the considered opinion of this Court, the Court while exercising its extra-ordinary writ jurisdiction, is required to follow the law while attempting to balance the equities.

Similarly, the argument of the learned counsel that 117 NRI



students would stand deprived of admission lacks substance because the general category candidates, who are comparatively meritorious than 117 NRI aspirants cannot be deprived of their chances only to make way for students who have wherewithal to pull the strings and study any where in the world.

**VII. CHANGE IN THE CRITERION OF SEAT
ALLOCATION (IN NRI QUOTA):-**

3.10 Similarly, Mr. Patwalia's argument that there is no change in the criterion is against the record. It is evident from comparative/ side by side reading of clause 17 of the original prospectus and corrigendum dated 20.08.2024, that the category of NRIs/their children has been expanded by substitution; in order to accommodate candidates, who are either the wards or the nearest relation of NRIs including the real brother or sister of father, real brother or sister of mother, father and mother of father, father and mother of mother, first degree paternal/maternal cousins. They are sought to be included in the category of NRIs only because one of their relative is settled out of India who is prepared to lend his name though the student or his parents are not NRIs. Moreover, Clause (IV) is vague and amenable to misuse. No elaborate and clear criteria has been laid down to evaluate the guardianship of the NRI. As per the corrigendum, the evaluation of guardianship is so vague that it is apparent that the process is not wholly transparent. It has been based upon the subjective satisfaction of the committee on the basis of affidavit submitted by the NRI. The experience shows that such vague stipulation leads to arbitrary use and it encourages corruption.



**VIII. ENABLING POWER OF STATE TO ALTER
CONDITIONS:-**

3.11 The last submission of Mr. Patwalia is with regard to State's enabling power to alter the conditions while placing reliance upon various clauses of the prospectus. This aspect is required to be analyzed in the context of clarification/removal of difficulties at the eleventh hour. Such power to amend or correct cannot be permitted to be used to fundamentally change the scope of category of 'NRI' so as to admit less meritorious students in medical colleges.

**IX. EDUCATION:- A PROFIT DRIVEN ENTERPRISE OR A
WELFARE ORIENTED ENDEAVOUR?**

3.12 However, imparting education is not an economic activity but a welfare oriented endeavour as the ultimate aim is to achieve an egalitarian and prosperous society in order to bring about social transformation and upliftment of the nation. Doctrine of merit and fairness cannot be sacrificed only because the students falling in the expanded definition of Non-Resident Indian (NRI) possess financial muscle. Capitation fee has totally been prohibited. If the admissions in the expanded NRI category to include non genuine NRIs are permitted; the prohibition made on charge of capitation fee would serve no higher purpose, as the State/private colleges would be at liberty to reap the benefits by amending the provisions according to their whims, which means accepting it by disguising the process.

**X. EXERCISE OF ENABLING POWER AFTER THE LAST
DATE OF SUBMISSIONS OF THE APPLICATIONS:-
BONAFIDE OR NOT?**

3.13 On 20.08.2024, the process of submitting applications had already come to an end wholly. The subsequent amendment amounts to the



substitution of a new clause while defining the category of NRI which has resulted in fundamental changes. This amendment has been brought against the observations made by the Court from time to time. In para 17 of a Full Bench judgment in *Amardeep Singh Sihota vs. State of Punjab, 1999(4) R.S.J., 667*, declared that the prospectus cannot be subsequently changed by the Government to the detriment of the students to benefit other students. It is also against the public interest because the paramount consideration while imparting the medical education is to improve the facility of availability of good doctors, so that poor health standards of the country are taken care of. Meritorious doctors are the need of the hour, as they play a crucial role in developing the health of the nation. The substitution of the expanded category of NRI cannot be made applicable to the applications which had already been submitted and the process of admission to the college had reached at an advance stage. Moreover, no plausible explanation has been put forth that explains the necessity to make changes in the policy after the process of admission of students had made substantial progress. The reasons disclosed by the Government in its written statement also do not justify changes made in midstream. It is not appropriate for the Government to take cover of the prospectus issued by the NMC because that prospectus only relates to 15% 'All India quota' seats. The State is well within its power to regulate the reservation of seats with respect to State quota. The regulations made by MCI does not affect the competence of the States to make provisions with respect to reservation. Reliance in this regard can be placed on the judgment passed by the Constitutional Bench in *Tamilnadu Medical Officers Association and others vs. Union of India and others (2021) 6*



SCC 568 and Modern Dental College and Research Centre vs. State of Madhya Pradesh, (2016) 3 CC, 353. By making changes the underlying principles for admission had been changed after the admission process had commenced which should not be permitted. By the evening of 19.08.2024, the total number of eligible candidates, who had claimed admission through the original NRI category were known. The subsequent change indicates that six(6) private private medical colleges in the State may have influenced the process to increase their financial gain. Hence, changes made after the admissions had commenced are not permissible in the eyes of law and principles of natural justice.

XI. EXPANSION OF TERM 'NRI'

3.14 The category of NRI in the unamended prospectus covers genuine NRIs. In fact, by substitution, the candidates who are not real NRIs have been included. It may be noted here that while issuing the prospectus, State of Punjab was not expected to be unaware of this position. Once a conscious decision was taken to extend the benefit to genuinely eligible NRI candidates as per P.A.Inamdar's case (supra), there was no occasion to change the eligibility criteria. As already noticed, the State of Punjab has failed to disclose the justifiable reasons that lead to the substitution and re-opening of admission for the 'NRI' candidates and that also after the last date.

3.15 The AG, Punjab, has contended that the UOI while issuing brochure for NEET examination has followed the expanded criteria and in the neighbouring States of Himachal Pradesh, Haryana, the scope of



admission through 'NRI category' is wider than State of Punjab in comparison. It is significant to note that the brochure issued by UOI is only with respect to 15% 'all India quota' seats. The State Government is entitled to lay down its own criteria with respect to admission to 85% seats which fall in the State quota. The Supreme Court in para 131 of **P.A.Inamdar's case (supra)** has held that the term NRI in relation to admission is a misnomer. In most of the cases, the students who gets admission in this category are neither NRIs or their children. Under this category, less meritorious students who can afford to bring more money get admission. Therefore, such category does not deserve any encouragement from the Court. Para 131 is extracted as under:-

“Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ('NRI', for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to certain number of students under such quota by charging a higher amount of fee. In fact, the term 'NRI' in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by



such students admitted against NRI quota enables the educational institutions to strengthen its level of education and also to enlarge its educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bona fide by the NRIs only and for their children or wards. Secondly, within this quota, the merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically weaker sections of the society, whom, on well defined criteria, the educational institution may admit on subsidized payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the



Committees constituted pursuant to direction in Islamic Academy's to regulate.”

3.16 The reliance placed by NRI's counsel upon the order passed in **Consortium of Deemed Universities in Karnataka (CODEUNIK) and another versus Union of India and others(Writ Petition (Civil) No.689 of 2017** is also not relevant because in the peculiar facts of the case the Supreme Court passed interlocutory order, which would not result in declaration of law as laid down in P.A.Inamdar (supra). Similarly, in **Anshul Tomar vs. State of M.P. And others, 2008 SCC Online MP, 139**, the Division Bench was considering cancellation of admission in the peculiar facts of the case. The Court relied upon the interlocutory order passed in **Ruchin Bharat Patel vs. Parents' Association for the M/D Students and others, 2006 SCC OnLine SC 1437**. In that case the order was passed in a peculiar situation because 15% seats under NRI quota were likely to go to waste. It is well settled that only the 'ratio decidendi' in a judgment is binding. Hence, with highest respect, the interlocutory orders/judgments relied upon the NRI's counsel are not applicable.

3.17 Similarly, Mr. Chhibbar's reliance on **Nipun Tewari and others vs. State of Maharashtra and others, 2022 INSC 1128**, is distinguishable because the issue pertains to reservation of 20% seats for in service candidates in Post Graduate Medical Degree Courses by the State of Maharashtra. The Hon'ble Supreme Court has specifically noted in para 32 that the issue has to be construed in the specific background of facts of the case.



3.18 Similarly, the reliance placed on Division Bench of Himachal Pradesh High Court in **Maharishi Markandeshwar University and another vs. State of Himachal Pradesh and others, 2020 SCC OnLine HP, 2495** is incorrect because the aforesaid judgment is based on no objection by State. Basically, it's a consent order passed by the Court in the peculiar facts of the case.

3.19 The issue of seats allocated under the Non-Resident Indian (NRI) quota in educational institutions has frequently been a subject matter of public debate and judicial scrutiny. 15% seats are reserved for NRI quota out of 85% State quota by the State of Punjab with the justification that higher fee can be charged to fund institutional development and offset the fee of others. However, the practice has often deviated from its intended purpose. In several instances, it has been observed that students benefitting from the NRI quota, as well as their parents, are not bonafide NRIs. Instead these seats tend to be filled by less academically meritorious students who possess the financial means to secure admission, in this category, thus diluting the merit based admission process.

3.20 Proponents of NRI quota argue that the funds generated through this system enable educational institutions to enhance the quality of their infrastructure, and support educational development. Furthermore, the NRI quota serves an additional purpose for persons of Indian origin who have migrated abroad and wish to have their children educated in India, as it allows their children to reconnect with Indian culture while also ensuring that funds are invested in the Indian Educational System.

3.21 However, allocation of such seats must be approached with



caution and strict regulation. It is recommended that the reservation of NRI seats be limited to no more than 15% of total intake, as per **P.A.Inamdar's case (supra)** and admissions shall be given to genuine NRIs, allowing their children or 'Wards' to be admitted under this category. The clause(e) of corrigendum has also used word 'ward', which should be understood in alignment with it's standard, elementary meaning, and therefore it shall include only a 'minor' who is under the guardianship of an NRI (i.e. bonafide guardianship); only such 'wards' shall be entitled to claim 'NRI Quota seats').

3.22. The expansion of 'NRI' definition through the recent corrigendum dated 20.08.2024, is arguably unjustified for several reasons. Initially, the 'NRI Quota' was intended to benefit genuine NRIs and their children, allowing them to access education opportunities in India. By broadening the definition to include distant relatives such as uncles, aunts, grandparents, and cousins, the core objective of NRI quota is undermined. This widening opens the door for potential misuse, allowing individuals who do not fall within the original intent of the policy to take advantage of these seats, potentially bypassing more deserving candidates.

3.23 Moreover, new clause (iv) of the modified provision, which permits relatives to qualify as guardians, simply by showing that he has looked after such student, is vague and lacks clear criteria. It creates room for manipulation, where guardianship might be claimed merely for the sake of securing admission under this category. This significantly dilutes the merit based admission process and unfairly disadvantages students who may be more academically qualified but lack the financial resources to compete



with those availing the 'NRI Quota' under these expanded terms.

3.24 In essence, the original intent behind the 'NRI quota'; to provide access for children of genuine NRI's, has been stretched beyond reasonable limits, and this would compromise the integrity and fairness of admission process. It is significant to note that the Government has also permitted the candidates to change their category when admission process was about to end which is questionable.

4. CONCLUSION

4.1 With respect to the foregoing discussion, Civil Writ Petition No.20788 of 2024 is allowed, whereas the remaining writ petitions shall stand dismissed. The corrigendum and the addendum are also quashed. The State of Punjab is directed to complete the process of MBBS admission under 'NRI category' in the State quota as per the original and unamended prospectus.

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

(ANIL KSHETARPAL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

10th September, 2024
nt

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