
(2006) 01 P&H CK 0164
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No 10071 of 2005

Bharat Gupta

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-01-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 15

Citation : (2006) 142 PLR 518

Hon'ble Judges : S.N. Aggarwal, J; J.S. Khehar, J

Bench : Division Bench

Advocate : D.R. Bansal, for the Appellant; Randhir Singh, D.A.G., Balram Gupta, Lalit Gupta, M.S. Guglani, A.K. Chopra and U.K. Agnihotri, L.P. Dhir, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Khehar, J.—The Department of Health and Medical Education, Haryana, assigned the task of conducting an entrance examination for determining inter-se merit of candidates desirous of seeking admission to the MBBS/BDS/ BAMS/ BHMS courses, commencing from the academic year 2005-06 in colleges located in the State of Haryana with the Maharishi Dayanand University, Rohtak (hereinafter referred to as the MDU, Rohtak). In compliance with the mandate of the State government, the MDU, Rohtak, issued a prospectus inviting applications from candidates desirous of seeking admission to the courses referred to above. The aforesaid prospectus sought applications only from the residents of the State of Haryana. In this behalf, it would be pertinent to mention, that 85% of the seats (in colleges located in Haryana, for the courses under reference) were to be filled up from amongst the residents of the State of Haryana, whereas, the remaining 15% of the seats were to be filled up on an all India basis, for which a separate entrance examination was conducted by the Central Board of Secondary Education (hereinafter referred to as the CBSE). The petitioner was desirous of seeking admission to the MBBS course as a resident of

Haryana, and therefore, submitted an application form along with the prescribed fee for taking the entrance examination to be conducted by the MDU, Rohtak, as a resident of Haryana. It would be pertinent to mention, that the petitioner fared very well in the said examination, inasmuch as, he was placed at Sr. No. 208 in the merit list prepared by the MDU, Rohtak. Despite the aforesaid merit position, the petitioner was not successful in gaining admission to the MBBS course against the 85% seats reserved for residents of the State of Haryana.

2. Through the instant writ petition, the petitioner originally impugned the action of the authorities in granting admission to respondents No. 6 to 27 in various medical colleges in the State of Haryana under the 85% quota by asserting, that they were ineligible for admission against seats reserved for residents of the State of Haryana. Be that as it may, the petitioner unilaterally decided to withdraw the instant writ petition against respondents No. 6 to 11, 13, 14, 16 to 22, 24, 26 and 27, The instant writ petition, as originally filed, was accordingly, dismissed against the aforesaid respondents by an order dated 25.10.2005. It is, therefore, apparent that the instant writ petition survives only as against the admission granted to respondents No. 12, 15, 23 and 25,

3. In order to substantiate his claim against respondents No. 12, 15, 23 and 25, learned Counsel for the petitioner has invited our attention to the decision rendered by this Court in *Damandeep Singh and Ors. v. State of Punjab and Ors.*, Civil Writ Petition No. 5436 of 2000, decided on 25.5.2000. He has also relied on the judgment rendered by this Court in *Manisha Bansal v. Baba Farid University of Health Sciences, Faridkot* Civil Writ Petition No. 11030 of 2003, decided on 24.5.2004.

4. The case of the petitioner, set out in the pleadings of the instant writ petition is, that respondents No. 6 to 27, besides applying for admission to the courses under reference in the State of Haryana had also applied for admission to the same courses during the same academic session, in States other than the State of Haryana. It is the contention of the learned Counsel for the petitioner, that having sought admission to the courses under reference, in other States, respondents No. 6 to 27 must be deemed to have availed of the benefit of admission in other States as residents of the said States. In sum and substance, the contention of the learned Counsel for the petitioner is, that no candidate can be a resident of more than one State, and therefore, as soon as a candidate has sought the benefit of admission in another State, he must be deemed to have ipso facto rendered himself ineligible for admission to the courses under reference in the State of Haryana Relying on the factual position (depicted through a compilation appended to the instant writ petition as Annexure P-2), learned Counsel for the petitioner vehemently contends, that the respondents had appeared for similar examinations in the States of Delhi, Punjab and Chandigarh. They must all, therefore, be treated as ineligible for admission against the 85% quota seats reserved for residents of the State of Haryana (for which the entrance examination was conducted by the MDU, Rohtak, on

22.5.2005). For purposes of ready reference, an extract of the compilation appended by the petitioner to the writ petition, is being reproduced hereunder:

Res. Ranking in Admitted to Appeared R.No./Rank No. Haryana Medical College in other State/UT No. 6 18 Rohtak Delhi 31019/234 7 48 Rohtak Delhi 32696/311 8 51 Rohtak Delhi 32424/2051 9 57 Rohtak Delhi 39405/11 10 65 Rohtak Delhi 35555/285 11 63 Rohtak Delhi 36802/2248 12 72 Rohtak Punjab 451238/ 13 77 Rohtak Delhi 31079/58 14 93 Rohtak Delhi 50928/300 15 106 Rohtak Punjab 425009/90 16 112 Rohtak Delhi 31340/416 17 113 Rohtak Delhi 31140/540 18 123 Mulana Delhi 32920/248 19 133 Mulana Chandigarh 302636/ 20 230 Mulana Delhi 39546/533 21 243 Mulana Delhi 31187/641 22 251 Mulana Chandigarh 3202 12/ 23 257 Mulana Punjab 447 144/ 24 270 Mulana Chandigarh 302993/ 25 28 Rohtak Punjab 480028/129 26 187 Rohtak Delhi 31250/ 27 85 Rohtak Chandigarh 305689/5

5. In so far as Damandeep Singh 's case (supra) is concerned, learned Counsel for the petitioner has invited our attention to the following observations recorded therein:

Each of these students shall file an affidavit as required under Annexure to the brochure. It is specifically directed that no application shall be entertained by the authorities unless an affidavit is filed declaring that the applicant has not already availed nor does he proposes to avail of such quota (85%) in any other State/ Union Territory except for State of Punjab. Issuance of this direction is imperative in order to maintain and carry out the directions of the Supreme Court in Dr. Pardeep Jain's case and all subsequent judgments in its true spirit. This alone would take the notified State policy in furtherance to the judgments of the Court to its logical end and would serve larger public interest.

In so far as Manisha Bonsai's case (supra) is concerned, learned Counsel for the petitioner has invited our attention to the fact, that Manisha Bansal had qualified the BDS course from the Government Dental College, Amritsar, in the year 2002. On the basis of the BDS degree issued to her, she appeared in an entrance test conducted by the Kurukshetra University, Kurukshetra (Hereinafter referred to as the KU, K) for admission to the MDS course, commencing from the academic session 2002-03. It would be pertinent to mention, that Manisha Banoal had sought eligibility for the aforesaid admission, on the basis of her residential status in Haryana. In the following year i.e. for the academic year 2003-04, Manisha Bansal appeared in the post graduate entrance test conducted by the State of Punjab for admission to the MDS course. Although, she had qualified the aforesaid test, and ought to have been admitted to the course, on the basis of the marks obtained by her in the entrance test, but her candidature was cancelled because she had availed of the benefit of admission in a State other than the State of Punjab, by appearing in the entrance test conducted for admission to the MDS course at the KU, K. Manisha Bansal had impugned the action of the Punjab State in cancelling her candidature. Manisha Bansal in the aforesaid case had claimed to be a bonafide resident of the State of Punjab

under Circular No. 173/95-3PP/II/9619 dated 6.6.1996, issued by the State of Punjab, because she had passed the 10+1 and 10+2 examinations from Mandi Gobindgarh situated in the State of Punjab, she had also passed the BDS course from Government Dental College, Amritsar, located in the State of Punjab. It was the vehement claim of Manisha Bansal, that she could not be denied admission to the MDS course in the State of Punjab, merely on account of the fact, that she had appeared in the MDS Entrance Examination-2002, conducted by the KU, K, by showing herself to be a resident of Haryana. Based on the submission made by the rival parties, this Court, while interpreting the prospectus issued by the Baba Farid University of Health Sciences, Faridkot (hereinafter referred to as the BFU, Faridkot) along with instructions dated 6.6.1996, recorded the following conclusions:

It is not in dispute that family of Ms. Manisha Bansal is a resident of Panipat in the State of Haryana. She claimed Punjab resident status because she had done 5 years B.D.S. Course from the State of Punjab and on that basis, she appeared in PGET-2003.

At the time of counselling, she produced the affidavit of her father- Shri Suresh Kumar Bansal, who declared that neither he nor his child/ward had obtained the benefit of residence in any other State, though as a matter of fact, his daughter (Manisha Bansal) had appeared in M.D.S. Entrance Examination, 2002 conducted by Kurukshetra University for admission to post graduate courses. The conditions of eligibility prescribed for M.D.S. Entrance Examination conducted by Kurukshetra University as contained in Clauses (A), (B) and (C) of Chapter-V of the prospectus were:

A. ONLY THE CANDIDATE OF THE FOLLOWING CATEGORIES WILL BE ELIGIBLE TO APPEAR IN THE MDS ENTRANCE EXAMINATION].

(i) Candidates who have passed the BDS Examination from recognised Dental Colleges/Institutions in Haryana. (Such candidates will submit a certificate to this effect from the Principal/Head of the Institution/ College last attended on the proforma given as Appendix-A).

(ii) Children/ wards (if parents are not living)/dependents;

(a) of the regular employees of Haryana State posted in or outside Haryana State or working on deputation;

(b) of the regular employees of the Statutory Bodies/Corporation established by or under an Act of the State of Haryana who are posted in Chandigarh or in Haryana or outside Haryana;

(c) of the regular employees of the Govt. of India posted in Chandigarh or in Haryana in connection with the affairs of Haryana Govt.

(iii) Children/ wards (if parents are not living)/ dependents of persons who after retirement have permanently settled in Haryana and draw their pension from the

treasuries in the State of Haryana.

(iv) Children/ wards (if parents are not living)/ dependents of pensioners of Haryana Govt. irrespective of the fact that the original home of the retiree is in a State other than Haryana or he has settled after retirement in our outside Haryana.

(v) Children/ wards (if parents are not living)/ dependents of persons who have permanent home in Haryana and include persons who have been residing in Haryana for a period of not less than 15 years or have permanent home in Haryana but on account of their occupation they are living outside Haryana.

(vi) The wives of such persons who were bona fide residents of Haryana irrespective of the fact they had belonged to any other State before marriage.

(vii) Persons who were born in Haryana and produce a certificate to that effect.

Provided that the parents/guardians (if parents are not living) of persons belonging to any one of the above mentioned seven categories:-

(a) are citizens of India, and

(b) produce an affidavit to the effect that they/or their children/ wards (if parents are not living)/ dependents have not obtained the benefit of domicile in any other State.

B. Candidates should submit ONE OF THE FOLLOWING as proof of bonafide residence in Haryana.

1. University certificate that the candidate has passed the BDS from recognized Dental Colleges of Haryana.

2. For children of employees of Haryana Govt./Pensioners of Haryana Govt./ Employees of Statutory Bodies/Corporations established by or under an Act of the State of Haryana, certificate to this effect issued by Head of the office.

3. For all other candidates:-

A domicile certificate issued by the District Magistrate/General Asst. to Deputy Commissioner or Sub Divisional Officer (Civil) of the District/Sub Division to which the candidates belong. The certificate must be in the form given in Annexure -"A". Provided that the above rules will cover wards of the persons concerned in case the parents of the candidate are not living.

C. The candidates who by the virtue of any other reasons/facts than those covered in the preceding paragraphs to be duly supported by relevant documents in original, claim the benefit of Haryana domicile/residence must present such documents before the said counselling board which shall have all powers to accept or reject such documentary proof as might be submitted by the candidate (s) in support of such claim.

In our opinion, Manisha Bansal could not have applied for and appeared in M.D.S. Entrance Examination, 2002 conducted by Kurukshetra University but for the fact that she was a bonafide resident of Haryana, It is, thus, clear that she did obtain the benefit of being a resident of Haryana and thereby rendered herself ineligible for appearing in PGET-2003.

We are further of the view that the Committee rightly declined to entertain the candidature of petitioner-Manisha Bansal by invoking Clause (III) of the General Conditions contained in Para 10 of notification dated 27.3.2003 because affidavit dated 7.6.2003 given by her father- Shri Suresh Kumar Bansal was per se false."

5. In so far as the present controversy is concerned, the claim raised by the petitioner has to be interpreted on the basis of the prospectus issued by the MDU, Rohtak, coupled with the instructions issued by the State of Haryana, vide letter No. 62/17/95-6GSI dated 3.10.1996, relevant extract of which is being reproduced hereunder:

...The matter has been reconsidered in the light of judgment delivered by the Hon"ble Supreme Court of India in the case of Dr. Pradeep Jain v. Union of India and Ors. reported as AIR 1984 S.C. 1421, wherein it has been held that instead of the word "Domicile" the word "Resident" be used in the instructions issued by the State Government and it has been decided to revise the Government instructions. Henceforth, the following categories of persons would be eligible for the grant of Resident Certificate:

i) Candidates who have passed the examination qualifying there for selection in an institution from a school/college in Haryana.

ii) Children/Wards (if parents are not living)/Dependents:

a) of the employees of Haryana State posted in or outside Haryana State or working on deputation;

b) of the employees of the statutory bodies/corporations established by or under an act of the State of Haryana who are posted in Chandigarh or in Haryana or outside Haryana.

c) of the employees of the Government of India posted in Chandigarh or in Haryana in connection with the affairs of the Haryana Government;

iii) Children/Wards (if parents not living)/dependents of persons who after retirement have permanently settled in Haryana and draw their pensions from the treasuries situated in the State of Haryana.

iv) Children/Wards (if parents are not living)/dependents of pensioners of Haryana Government irrespective of the fact that the original home of the retiree is in a state other than Haryana or he has settled after retirement in or outside Haryana.

v) Children/Wards (if parents are not living)/dependents of persons who have permanent home in Haryana and include persons who have been residing in

Haryana for a period of not less than 15 years or who have permanent home in Haryana but on account of their occupation they are living outside Haryana.

vi) The wives of such persons who are bonafide residents of Haryana irrespective of the fact that they had belonged to any other State before marriage;

vii) Persons who were born in Haryana and produce a certificate to that effect; provided that the parents/guardians (if parents are not living) of persons belonging to any one of the above mentioned categories are;

a) Citizen of India;

b) Produce an affidavit to the effect that they or their children/wards (if parents are not living)/dependents have not obtained the benefit of Resident in any other State.

2. All candidates claiming to be bonafide residents of Haryana should produce a Haryana Resident Certificate signed by the District Magistrate/General Assistant to Deputy Commissioner or Sub-Divisional Officer (Civil) of the District/Sub-Divisions to which the candidates belong. Resident Certificates in respect of elsewhere or in respect of the Children/Wards/Dependents of Haryana Govt. employees who are posted at Chandigarh, Delhi or elsewhere or in respect of Children/Wards/Dependents of pensioners of Haryana Govt. or in respect of Children/Wards/Departments of the employees of the Government of India posted at Chandigarh or in Haryana in connection with the affairs of Haryana Government, or in respect of Children/ Wards/Dependents of the employees and retirees of the Statutory Bodies/Corporations of Haryana, established by or under an Act of the State of Haryana or a Central Act and located at Chandigarh, Haryana or outside Haryana, should be by their respective Heads of Departments,

3. Candidates seeking admission in educational institutions (including medical and technical institutions) located in Haryana, may not be required to produce Resident Certificate, if they have passed the examination from a school/college situated in Haryana. For this purpose, a certificate of the Principal/Headmaster from concerned institution where the children/wards studied last should be considered sufficient. The Principal/Headmaster of the institution shall be competent to issue such certificate, which should be sufficient.

4. If a candidate is admitted on the basis of claim that he belongs to the State of Haryana but at any subsequent time is discovered that his claim was false, the student shall be removed from the institution, all fees and other dues paid up to the date of such removal shall be confiscated. The Principal/Headmaster may take such other action against the student and his/her parents/guardians as he may deem proper in the circumstances of any particular case.

5. For the purpose of uniformity for issuing certificate of Residence in the case of various categories to be issued by the competent Authorities, proformas have been prescribed which are enclosed herewith.

6. These instructions may kindly be noted carefully for compliance and the receipt of this letter may please be acknowledged.

The affidavit referred to in paragraph (vii) (b) of the aforesaid instructions is also being extracted hereunder;

AFFIDAVIT OF THE PARENT/GUARDIAN TO BE ATTESTED BY EXECUTIVE MAGISTRATE/OATH COMMISSIONER/NOTARY PUBLIC.

I...father/mother/guardian of Miss/Mr....resident of...do hereby solemnly state and affirm as under;-

1. That I am a Citizen of India. 2. That neither the deponent nor the child/ward of the deponent have obtained the benefit of Residence in any other State.

Dated..., DEPONENT

VERIFICATION

Verified that the contents of my above affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therein.

Dated...DEPONENT."

The contention of the learned Counsel for the petitioner, during the course of arguments, and as pleaded in paragraph 11 of the writ petition is, that a candidate seeking admission to the MBBS course cannot appear in more than one State against the 85% State quota seats. The private respondents in this case having availed of the opportunity of appearing in the entrance test against the State quota seats reserved in States other than the State of Haryana, must therefore, be deemed to have lost their right to seek admission against the 85% State quota seats, reserved for candidates belonging to the State of Haryana. It is also the contention of the learned Counsel for the petitioner, that before the commencement of the process of counselling, the petitioner required the authorities to seek an affidavit from the candidates seeking admission against the 85% State quota seats disclosing, whether or not, they had appeared in an entrance test conducted for admission to the MBBS course for a State(s) other than the State of Haryana. It is pointed out, that since no action was taken by the respondents, the petitioner issued a legal notice dated 15.6.2005 (Annexure P-9), whereby he brought to the notice of the authorities, not only the judgments rendered by this Court in Damandeep Singh's case (supra) and Manisha Bansal's case (supra), but also clearly informed the authorities, that the private respondents had applied for admission to the MBBS course against the 85% State quota seats reserved in States other than the State of Haryana. The petitioner, through the aforesaid notice, had accordingly requested the respondents not to consider the claim of such candidates for admission to the MBBS course. The petitioner requested the authorities to take appropriate action before fixing the date of counselling. The petitioner also threatened the respondents through the aforesaid notice, that in case, the respondents failed to

discharge their duties in accordance with law, he would be compelled to initiate legal proceedings against them.

6. Since the authorities continued to take into consideration the claim of such candidates who had also appeared in the common entrance test conducted in other States for admission against State quota seats, the petitioner approached this Court by filing the instant writ petition as early as in July, 2005 so as to avoid the implication of the judgments rendered by the Supreme Court whereby, there is a complete ban of admissions after 30th of September.

7. Having examined the issue canvassed by the learned Counsel for the petitioner, it is apparent, that the claim raised in the instant writ petition, is very simple, and is based on the conclusions drawn by this Court in Manisha Bansal's case (supra). The petitioner, therefore vehemently contends, that admission of the private respondents should be set aside, on the strength of the legal position expressed in Manisha Bansal 's case (supra), and the petitioner should be allowed admission against the resultant vacancies on the basis of his ranking in the entrance examination conducted by the MDU, Rohtak.

8. While acknowledging the factual position expressed by the learned Counsel for the petitioner, it is the vehement contention of the learned Counsel for the respondents, that the private respondents had not availed of "the benefit of residence in any other State" for seeking admission to the courses under reference. It is also their case, that by merely applying for admission against the 85% State quota seats, in States other than the State of Haryana, and/or by merely appearing in an entrance test conducted by a State other than the State of Haryana, for the said purpose, the private respondents cannot be deemed to have "obtained the benefit of residence" in such other State. Referring to the judgments relied upon by the learned Counsel for the petitioner in extensor, it is submitted by the learned Counsel for the respondents, that this Court in the decision relied upon by the learned Counsel for the petitioner assumed, that the concerned candidate had factually "obtained the benefit of residence" because the aforesaid aspect was not a matter of dispute between the parties in the cases referred to above. In other words, the petitioner in Manisha Bansal's case (supra) having applied for and appeared in the entrance test conducted, did not dispute the determination by the authorities, that she was deemed to have availed the benefit of residence in the State of Haryana. In the present controversy, it is seriously disputed at the hands of the respondents, that the action of a candidate in applying for and in appearing in a common entrance test for admission against the 85% State quota seats, cannot be considered to be an act on the part of such candidate, of having "obtained the benefit of residence" in the said State. Additionally, it is pointed out by the learned Counsel for the respondents, by relying upon the extracted portion of the judgment in Manisha Bansal's case (supra), that the judgment rendered in Manisha Bansal's case was primarily based on the fact, that the father of the petitioner had filed an affidavit on the issue of residence, which in the opinion of the Division Bench "was per se

false".

9. Despite the aforesaid submissions of the learned Counsel for the respondents, it is the vehement contention of the learned Counsel for the petitioner, that the facts and circumstances, relating to the issue of residence in Manisha Bansal's case (supra), are exactly the same as in the present controversy. In this behalf, learned Counsel for the petitioner has also invited our attention to the affidavit required to be filed by that parent/guardian of candidates seeking admission, which requires a clear affirmation, that the candidate had not obtained "the benefit of residence in any other State". It is, therefore submitted, that the instant controversy should also be disposed of in terms of the decision referred to hereinabove, and that, the admission granted to the private respondents, deserved to be set aside in terms of the decision rendered by this Court in Manisha Bansal 's case (supra).

10. Having gone through the judgment rendered by the Division Bench of this Court in Manisha Bansal's case (supra), we are satisfied, that while adjudicating the controversy raised in Manisha Bonsai's case (supra), this Court did not have the occasion to examine, whether or not, the act of a candidate in applying for or appearing in an entrance test conducted by another State, would per-se amount to having availed the benefit of residence in the said State. It is, therefore, that we take upon ourselves the task of determining, whether the action of a candidate in applying for admission and/or in appearing in an entrance test, (for admission against the 85% State quota seats for the MBBS course), constitutes an act, of having obtained the benefit of residence in such State.

11. The aforesaid issue may be examined on the basis of a hypothetical illustration (derivable from the present controversy itself)- If a candidate applies for admission against the 85% State quota seats for the MBBS course in two States, say, in the States of Punjab and Haryana. And further, that such candidate also appears separately in the entrance tests conducted by the designated universities for the aforesaid two States. Would such a candidate be deemed to have availed the benefit of residence, in both the States ? If the answer to the aforesaid query is in the affirmative, it is apparent, that he has rendered himself ineligible for admission in either of the two States. It is obvious, that the candidate having applied for and appeared in the common entrance test, conducted in the State of Punjab, will be ineligible for admission in the State of Haryana, because he will be deemed to have obtained the benefit of residence in Punjab. For the same reason, the converse would also be true, i.e., such a candidate will be ineligible for admission in the State of Punjab, because he will be deemed to have obtained the benefit of residence in Haryana. It is apparent, that the stipulation in respect of residence, could not have been envisaged in the manner concluded hereinabove. It is, therefore, not possible for us to accept, that the act/action of a candidate in merely applying for admission or by taking an entrance test for the ultimate objective of seeking admission can be treated as an act of having obtained a benefit.

12. Does the action of a candidate, who applies for admission to a course in a particular State against the State quota seats, and/or appears in an examination therefor, merely stand in a queue for seeking a benefit? In other words, is a benefit vested in a candidate merely on the basis of an action of applying for admission or appearing in a test for such admission? Alternatively, should a benefit be deemed to have been availed by a candidate seeking admission, only after having participated in the process of selection, he gains admission to the course applied for? It is apparent from the conclusion drawn in the foregoing paragraph, that an answer in the affirmative to the first question posed in the instant paragraph, would result in an anomalous conclusion. A candidate, in our view, can be deemed to have availed a benefit, only when he is a recipient of the claim sought. The act/action of a candidate in applying for admission, or in appearing in an entrance test, is obviously with the objective of fulfilling his desire/claim to gain admission. A candidate desiring/claiming admission can, therefore, be deemed to have availed of a benefit only when the said desire/claim is fulfilled. All or any intermediate stages in the process of gaining admission cannot, therefore, be treated as acts/actions whereby such a candidate can be considered to be recipient of a benefit. In the aforesaid view of the matter, it is only possible to accept, that a candidate is deemed to have obtained the benefit of residence when the candidate having appeared for admission against the 85% State quota seats, and having attained the requisite merit, accepts admission to the course.

13. The conclusions drawn in the foregoing two paragraphs can be evaluated and examined from a different angle as well. We have extracted above the terms and conditions prescribed by the State of Haryana, on the fulfilment of which, a candidate can seek admission as a resident of that State. A separate but similar set of conditions has been prescribed by the State of Punjab, under which a candidate can seek admission as a resident of the said State. Be that as it may, a perusal of the terms and conditions expressed by the two States envisage, that a candidate can be eligible for admission as a resident of both the States. In other words, the same candidate may very well fulfil the conditions of being a resident of the State of Haryana in terms of the instructions issued by the State of Haryana, and can also be eligible for admission in the State of Punjab as a resident of the said State. That being so, it would obviously be open to such a candidate to make a choice between the two States in the fulfilment of his desire to seek admission. Such choice can obviously be restricted, as has been done, by incorporating in the affidavit required to be filed by the parent/guardian of the candidate affirming, that the candidate in question has not sought the benefit of residence in any other State. Such a restriction, in our view, would be in consonance with the provisions of the Constitution of India and also in conformity with the legal position declared by the Apex Court, on the basis of which the 85% State quota seats are reserved on the basis of residence separately for every State. In our view, it would be wholly unreasonable to deprive a candidate who fulfils the conditions of eligibility prescribed in terms of residence, if he is

debarred from even competing in the process of admission. The only fair manner in examining the issue in hand is, to ensure that every candidate is afforded an opportunity of entering the fray of the selection process, for which he is eligible, and having participated in the same, to allow him to exercise his option and choose one of the States for which he fulfils the condition of residence, as the State of his choice wherein he would desire to pursue his academic career. Having exercised his choice for a particular State, the clause under reference would come into play as, such a candidate will be deemed to have "obtained the benefit of residence" for such State, and therefore, would be ineligible for admission in any other State. Examining the issue in any other manner would, amount to the negation of the rights of such a candidate(s), envisaged under Articles 14 and 15 of the Constitution of India.

14. On the basis of the conclusions recorded in the foregoing three paragraphs, we are of the considered view, that the private respondents herein, cannot be deemed to have availed the benefit of residence, in States other than the State of Haryana, merely by applying for admission to the MBBS course against the 85% State quota seats in such States (other than the State of Haryana); or even by appearing in the entrance test conducted by such States.

15. We, therefore, hereby hold, that a candidate will be deemed to have availed the benefit of residence of a State, only after he accepts admission in the said State, on the basis of residence. The sole contention of the learned Counsel for the petitioner is, that the private respondents had applied for admission to the MBBS course in States other than the State of Haryana, and that, they had appeared in the entrance tests held by the said States. It is not the case of the petitioner, that any of the private respondents had ever availed the benefit of residence, for gaining admission to any course, in any State other than the State of Haryana.

16. In view of the above, we find no merit in the claim of the petitioner, that the admission granted to the private respondents, in institutions located in the State of Haryana, was wrongful because they had availed benefits in other States on the basis of their residence in such States.

17. Finding no merit in the claim of the petitioner, we hereby dismiss the present writ petition.