
(2016) 03 OHC CK 0063
In the Orissa High Court
Case No : W.P.(C) No. 6923 of 2015

Dr. Satyabrata Kanungo

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2016) 122 CutLT 545 : (2016) 2 ILRCuttack 69

Hon'ble Judges : Indrajit Mahanty and Dr. D.P. Choudhury, JJ.

Bench : Division Bench

Advocate : M/s. Jaganath Patnaik, B. Mohanty, T.K. Patnaik, S. Patnaik, A. Patnaik, R.P. Roy and B.S. Rayaguru, Advocates, for the Petitioner; Mr. Jyoti Pattnaik, Addl. Govt. Advocate,, for the Opposite Parties Nos. 1 and 2; Mr. R.C. Mohanty, K.C. Swain and S. Pattn

Final Decision : Disposed Off

Judgement

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Dr. D.P. Choudhury, J.—Challenge is made to Clauses I (6) & F (5) enshrined under the Guidelines for counselling and admission of candidates",

for Post Graduate (Medical) courses in the Medical Colleges of Odisha for the academic sessions 2014-2015 and 2015-2016, respectively",

(hereinafter called Guideline 2014-2015 and Guideline 2015-2016), as the same are ultra vires to Articles 14 and 16 of the Constitution of India",

by debarring the petitioner to be considered for selection in the next three academic sessions of P.G. course as well as ineligible to participate for,

P.G. (Medical) counselling.,

Facts,

2. The unshorn details of the case of the petitioner is that the petitioner is a

doctor by profession having completed MBBS from V.S.S. Medical, College, Burla in the year 2006. Thereafter the petitioner joined at P.H.C. (N), Kodabhata, Jharigaon Block, Nabarangpur as Medical Officer and", worked till 31.3.2015 having duration of service for 1862 days.,

3. While the matter stood thus, the petitioner applied for P.G. Medical Entrance Examination (as an in-service candidate) for the period from", 2014- 2015 and he got selected in fourth counselling in the subject Radiotherapy. He took admission on 26.6.2014 at S.C.B. Medical College &, Hospital, Cuttack but later on he did not find himself comfortable to the subject for which he surrendered the seat in Radiotherapy stream on", 8.7.2014 with the hope that he will get another subject which will be more comfortable for him to render service to the patients. It is stated that on, 10.7.2014 fifth round of counselling for the academic year 2014-2015 was held but the seat left by the petitioner remained unfilled.,

4. The petitioner again applied for the P.G. Medical Course for the academic session 2015-2016 and got him selected having AIPGEMEE rank of, 13911 as in-service candidate. In in-service category in the State his rank became reflected as Sl. No.40. While he waited for the counselling, on", 24.3.2015 a notice was served on him stating that he is ineligible to participate in the counselling during 2014-2015 as he being admitted to, Radiotherapy course during 2014-15 did not join at the S.C.B. Medical College & Hospital.,

5. It is alleged, inter alia, that petitioner being meritorious and having secured the rank 40 in the in-service category failed to get qualified for", counselling in the P.G. Medical course for next three years due to Clause-I (6) and F (5) to the year 2014-2015 and 2015-2016, respectively, in", their respective Guidelines. He came to know that Clause F (5) of the Guideline for the year 2015-2016 read with Clause K (2) of the same, Guideline is very harsh for the meritorious students who had left the course after being offered, is too onerous and harsh, essentially challenge those", clauses having narrated the same as ultra vires being violative of Articles 14 and 16 of the Constitution of India.,

6. It is averred by the petitioner that the Clause like I (6) & F (5) read with Clause K(2) respectively as enshrined in the Guidelines for the year, 2014-2015 and 2015-2016 for State of Orissa not only debar the students for

prosecuting the P.G. course for a period of three years but also, penalise the students having directed to collect the stipend received by them and also to recover Rs. 1 lakh from their possession, in default of", payment such money, the original certificates ought to be retained by the authorities without being disbursed to the concerned candidate. There is", no such provision maintained in other States like Karnataka, Postgraduate Institute of Medical Education and Research, Chandigarh and States", like West Bengal and Uttaranchal. Thus, the petitioner alleged that such conditions being harsh and creating hardship on the petitioner are", detrimental to the interest of meritorious students in the medical service which is undoubtedly cream service to the people at large. Be that as it, may, the petitioner prayed to declare Clause-I (6) and F (5) in the Guidelines for counselling and admission of candidates for P.G. (Medical)", courses in the Medical Colleges of Odisha for the academic session 2014-2015 and 2015-2016 respectively, under Annexure-1 series be", declared ultra vires and quash them. It is also prayed by the petitioner that the opposite parties should allow the petitioner to participate in the, counselling for 2015-2016 onwards. Hence the writ petition.,

7. The opposite parties filed counter stating that the opposite parties have got responsibility for making counselling for admission in P.G. Medical, course for 2015 in accordance with the guidelines of Medical Council of India and Council for Allotment of candidates for P.G. Medical courses in, Government Colleges of Orissa. In fact the petitioner got selected for joining Radiotherapy course in S.C.B. Medical College & Hospital for the, session 2014-2015 but he did not join and informed about his non-joining after the cutoff date for admission in P.G. Medical course is over.,

8. Clause I (6) and Clause F (5) of the Guidelines 2014-2015 & 2015- 2016, respectively, were there and after understanding such clauses the", petitioner has applied without challenging the same while he went through the Guidelines for the respective years. When he was aware of the, provisions and the same was not challenged, remained binding upon all. Since he left the course after the cutoff date was over, a seat in", Radiotherapy remained without being filled up and as such state was put to loss. As per the provisions of the Guidelines he was not called to the, counselling although he secured the rank 40 in Common Entrance Test to get

admission into P.G. course.,

9. It is also made clear from the counter that Postgraduate Institute of Medical Education and Research, Chandigarh and All India Institute of",

Medical Sciences (AIIMS) are autonomous institutions and governed by their own rules and regulations. The candidates taking admission in such,

institutions continued to complete the course without breaking the course in middle of the session. Since the opposite parties have acted according,

to law and necessary guidelines, the writ petition be dismissed with cost.",

Submissions,

10. Mr. J. Patnaik, learned Senior Advocate for the petitioner submitted that the petitioner has been illegally debarred from getting admission in",

P.G. course in the subject other than Radiotherapy due to faulty prospectus issued by the opposite parties. He further submitted that the,

prospectus issued by the opposite parties is saddled with malice, arbitrariness and unreasonableness for which the fundamental rights of the",

petitioner has been infringed under Article 14 of the Constitution. The Guidelines for the academic session 2014- 2015 and its Clause I (6) only,

contains about three years bar and there is no any penalty prescribed in such Guidelines for admission in P.G. course for 2014-2015. At the same,

time the Guidelines for admission to P.G. course during the academic year 2015-2016 contains the Clause F(5) and K(2) indicating that in addition,

to three years ban for taking admission into P.G. courses and penalty to pay money in the event of either not joining the course or leaving the,

course in the subject after being admitted is a double jeopardy, hardship and arbitrary policy decision of the State Government. He submitted that",

in such situation such impugned Clause F (5) in the Guidelines 2015-2016 being de hors to Article 14 of the Constitution should be scrapped. It is,

also submitted on behalf of the petitioner that the petitioner appeared in the entrance test for the year 2015-2016 and selected but the authorities,

with all malice did not call to the counselling thereby deprived the petitioner arbitrarily by not considering the candidature to take admission, for",

which his liberty to go ahead further education is violative of Article 21 of the Constitution. Since the policy decision of the Government by,

incorporating the provisions in the Guidelines for admission into P.G. course is unreasonable, unjust and improper, Clause I (6) in the Guidelines",

2014-2015 and F (5) in the Guidelines for admission during the academic year 2015- 2016 should be declared ultra vires and the same should be,

quashed. It is also submitted that the petitioner should be allowed to take admission in the event of selection for 2016-2017 to the P.G. course.,

11. Mr. Jyoti Pattnaik, learned Additional Government Advocate for opposite party Nos. 1 and 2 and Mr. R.C. Mohanty, learned Advocate for",

opposite party Nos. 3, 4 and 5 submitted that as per the decision of the Government the Guidelines for 2014-2015 and 2015-2016 have been",

issued and those Guidelines have been issued keeping in view the interest of the Medical education because if a student after being admitted into,

P.G. course leaves the course, that seat remains vacant for next three years as P.G. course is for three years and there is heavy loss to the State.",

They submitted that in order to cover the loss and discourage the students from leaving the courses, they have joined, such strict provision has",

been made in the Guidelines 2014-2015 and 2015-2016. They also stated that the penalty clause has been added during the academic year 2015-,

2016 to strengthen the medical education more by encouraging students to continue their courses and complete the same for the services rendered,

to the people of the State. According to them the provisions in the Guidelines for admission to P.G. courses have been made with reasons and,

rational for which it cannot be said that they are arbitrary or unreasonable requiring interference by this Court. Since the policy decision of the,

Government in no way affects the individual right of the petitioner and the same has been made keeping in view the interest of the State and large,

number of vacancies of doctors in the State, the Court should refrain from interfering with such decision and the writ petition should be dismissed.",

12. The points for consideration:-,

(i) Whether Clause I (6) in the Guidelines 2014-2015 and F(5) read with K (2) in the Guidelines 2015-2016 are arbitrary, unreasonable and",

unjust affecting the right of the petitioner under Article 14 and Article 21 of the Constitution.,

(ii) Whether the petitioner is entitled to the reliefs prayed for.,

Discussions,

Point No.(I) :,

13. It is admitted fact that the petitioner was an in-service candidate for

admission to the P.G. course for the academic year 2014-2015 and got, selected in the subject Radiotherapy. It is also admitted fact that after being admitted in S.C.B. Medical College & Hospital, Cuttack, the", petitioner surrendered the seat in the subject Radiotherapy with intimation to the opposite party Nos.2 and 3. It is not disputed that the petitioner, again applied for admission into P.G. course during the academic year 2015-2016 and got the all India rank and also in the State list he remained, in the merit list at Sl. No.40 but he was not allowed to attend counselling on the ground that by virtue of Clause F (5) in the Guidelines 2015-2016, he is dis-entitled to attend the counselling.,

14. In the writ petition it has been pleaded that the petitioner after being selected in 2014-2015 for joining the course for the subject Radiotherapy, took admission on 26.6.2014 by joining at S.C.B. Medical College & Hospital, but he found the subject was not favourable to him for which he", surrendered the seat in Radiotherapy stream on 8.7.2014 before the fifth round counselling on 10.7.2014. According to the petitioner the opposite, parties did not notify the said surrendered seat for admission for which the subject Radiotherapy remained unfilled. On the other hand, in the", counter it is asserted by opposite parties that before joining the course the petitioner surrendered Radiotherapy subject but the intimation for, leaving that course was made after the cutoff date for admission was over. The counter of the opposite parties is not specific about the cutoff date, of admission and it is not also specific on which date intimation of the petitioner was received by them. It is settled in law that writ is the nature of, the suit in a civil matter and the counter is equivalent to the written statement in the suit. Order 8, Rule 5 (1) states as follows:-",

5. Special denial- (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the", pleading of the defendant, shall be taken to be admitted except as against a person under disability:",

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.,

From the aforesaid provision, it is clear that where there is no specific denial by the opposite parties to the fact pleaded by the petitioner it shall be",

taken to be admitted. When there is specific averment of the petitioner that he

joined the course on 26.6.2014 and surrendered the seat on, 8.7.2014 before fifth counselling on 10.7.2014, this fact is said to have been admitted by the opposite parties while the opposite parties have not", come clear denial of such fact and have only stated that the intimation was received after the cutoff date of admission was over particularly without, mentioning the date of cutoff date of admission and date of receipt of intimation in the counter. At the same time the opposite parties stated that, before joining the course the petitioner has surrendered the seat in Radiotherapy. However, the facts remain that petitioner did not join the course", after taking admission but surrendered the seat in Radiotherapy during academic year 2014-2015.,

15. The impugned Clause I (6) of the Guidelines for candidates for Post Graduate Medical courses in the Medical Colleges for the academic, session 2014-2015 is prescribed hereunder:,

I(6) If any candidate does not join or leaves after joining the PG Course, due to which a seat goes lapsed, then the candidate concerned shall not", be considered for selection in the next three academic sessions of the PG Course and the stipend/salary already received by him/her will have to be, refunded."",

Period at which resignation is tendered/accepted, Penalty (Rs.)

- Within one month of joining, "50,000/-
- After one month and within six months of joining, "75,000/-
- After six months and within one year of joining, "1,25,000/-
- After one year and within two years of joining, "1,75,000/-
- After two years of joining, "2,25,000/-

of Rs. 100/- value as prescribed in Annexure-II to the effect that he/she will complete the prescribed period of training or in default to pay Rs.,

2,00,000/- (Rupees Two Lakhs only) to the University and shall refund the amount received as stipend upto that date to the Government."",

20. From all the aforesaid prospectus it is found that the candidates have been penalised for their untimed discontinuance of the P.G. course,

prosecuted by them but that penalty is in the shape of payment of money but not forfeit their future to prosecute the higher study. It is the plea of,

the opposite parties as pleaded in the counter that these institutions are

autonomous and they can take any decision. It is not the question of any, principle of autonomous institution or Government institution but it is a question of constitutional right of a person to prosecute higher study to, exercise his right and liberty to life. Moreover, it is not pleaded in the counter which Guideline of Medical Council of India (MCI) has been", followed by the State Government to retain the impugned Clauses in the respective Guidelines, 2014-2015 and 2015-2016 inasmuch as it is", settled that M.C.I. is the apex body and no Medical Colleges in the country can admit students without following its Guidelines. At the same time, the interest of public is not involved because more strict view will deter the doctors from joining the services and causing irreparable loss to the, general public to get their right to health to be exercised at their option. On the other hand, the medical profession is well connected with the public", interest. Therefore, the prospectus should be reasonable and fair one so as to cater the need of the individual and the society including the people."

We are, therefore, of the considered view that Clause I (6) in the prospectus 2014-2015 and Clause F (5) in the prospectus 2015-2016 are", unreasonable and improper and as such violative of Article 14 of the Constitution.,

21. The decision reported in AIR 1971 SC 2560 in the case of State of A.P. v. L. Narendra Nath wherein Their Lordship observed in, paragraphs-18 and 19 of the said judgment are as follows:-,

18. Lastly it was urged that such test affected the personal liberty of the candidates secured under Article 21 of the Constitution. We fail to see", how refusal of an application to enter a medical college can be said to affect one's personal liberty guaranteed under that Article. Everybody", subject to the eligibility prescribed by the University, was at liberty to apply for admission to the Medical College. The number of seats being", limited compared to the number of applicants every candidate could not expect to be admitted. Once it is held that the test is not invalid the, deprivation of personal liberty, if any, in the matter of admission to a medical College was according to procedure established by law. Our", attention was drawn to the case of Spottswood v. Sharpe, (1953) 98 L. Ed. 884 in which it was held that due process clause of the Fifth", Amendment of the American Constitution prohibited racial segregation in the District of Columbia. Incidentally the Court made a remark (at,

p.887):,

Although the Court has not assumed to define ""liberty"" with any great precision, that term is not confined to mere freedom from bodily restraint.",

Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper",

governmental objective. Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on",

Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause.""",

The problem before us is altogether different. In this case everybody subject to the minimum qualification prescribed was at liberty to apply for,

admission. The Government objective in selecting a number of them was certainly not improper in the circumstances of the case.,

19. Learned counsel also referred us to an observation of this Court in *Satwant Singh v. Passport Officer*, (1967) 3 SCR 525 at p. 540 (AIR",

1967 SC 1836 at p. 1844) that:,

"liberty" in our Constitution bears the same comprehensive meaning as is given to the expression ""liberty"" by the 5th and 14th Amendments to the",

U.S. Constitution and the expression ""personal liberty"" in Article 21 only excludes the ingredients of ""liberty"" enshrined in Article 19 of the",

Constitution.""",

We do not find it necessary to dilate on this point in view of our conclusion that even if personal liberty extends to such conduct there has not been,

any deprivation thereof in violation of any procedure established by law.""",

22. With due respect, we are of the view that Hon'ble Apex Court did not consider the case of the petitioner in that case as no liberty of the",

petitioner has been violated by such procedure in admission to Medical Colleges. At the same time Their Lordships had made observation by,

referring to the case under American Constitution where segregation in public education is not reasonably related to any proper Governmental,

objective by imposing on Negro children a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause.,

On the other hand, the liberty in our Constitution bears the same comprehensive meaning as is given to the expression ""liberty"" by the American",

Constitution and thus Article 21 of the Constitution of India protects the liberty.

In the case in hand, we are of view that when the students of",
medical education are debarred from undergoing higher Medical education for
next three years by such impugned Clause which are not issued,
under any M.C.I. Guidelines and unlike any other reputed P.G. Institutions
Guidelines, same not only smacks the test of reasonability but also",
interfere with the personal liberty of petitioner to prosecute higher study and as
such impugned clauses are violative of Article 21 of the,
Constitution. Thus, we are of the considered view that Clause I (6) in Guidelines
2014-2015 and F (5) in the Guidelines 2015-2016 are",
unreasonable, unjust, unfair and violative of Article 14 and 21 of the Constitution
of India. Point No.(i) is answered accordingly.",
Point No.(ii),

23. It is contended by the learned counsel for the opposite parties that such
Clauses are made as per public policy of the State Government and,
the courts should be refrained from interfering with the public policy formulated
by the Government. Now the question arises whether this Court,
can interfere with such public policy which is otherwise violative of Article 14 and
21 of the Constitution. It is reported in (1997) 9 Supreme,
Court Cases 495 in the case of Krishnan Kakkanth v. Government of Kerala and
others where Their Lordships have observed as,
follows:-,

36. To ascertain unreasonableness and arbitrariness in the context of Article 14
of the Constitution, it is not necessary to enter upon any exercise",
for finding out the wisdom in the policy decision of the State Government. It is
immaterial whether a better or more comprehensive policy decision,
could have been taken. It is equally immaterial if it can be demonstrated that the
policy decision is unwise and is likely to defeat the purpose for,
which such decision has been taken. Unless the policy decision is demonstrably
capricious or arbitrary and not informed by any reason whatsoever,
or it suffers from the vice of discrimination or infringes any statute or provisions
of the Constitution, the policy decision cannot be struck down. It",
should be borne in mind that except for the limited purpose of testing a public
policy in the context of illegality and unconstitutionality, courts should",
avoid ""embarking on uncharted ocean of public policy"".",

37. The contention that the impugned circular suffers from hostile discrimination

meted out to the farmers in the northern region of the State,
covered by the financial assistance under the governmental schemes, by fastening such assistance with an obligation to purchase pumpsets only",
from the two approved dealers, cannot be accepted in the facts of the case. The reasons for fastening the farmers of northern region with the",
obligation to purchase pumpsets from the said two dealers have been indicated by Mr. Bhat and Mr. Gupta and, in our view, it cannot be held that",
such reasoning suffers from lack of objectivity. The law is well settled that even in the matter of grant of largesse, award of job contracts etc. the",
Government is permitted to depart from the general norms set down by it, in favour of a particular group of persons by subjecting such persons",
with different standard or norm, if such departure is not arbitrary but based on some valid principle which in itself is not irrational, unreasonable or",
discriminatory (Dayaram Shetty case).,

24. In the aforesaid decision Their Lordships were considering the circular issued by the Government of Kerala directing for distribution of,
pumpsets under Comprehensive Coconut Development Programme and other similar schemes. Therefore, the question arose about the",
interference of the Court to the policy of the Government of Kerala issued through the circular. Of course in the aforesaid case the Hon''ble Apex,
Court did not find fault with the policy decision of the Government of Kerala for which refused to interfere with the direction of the Government of,
Kerala. But the principle as stated above is very clear to the effect that the court can interfere if the policy decision is capricious, arbitrary and",
suffers from vice of discrimination or influence any statutory provisions of Constitution particularly Article 14 of the Constitution.,

25. It is reported in 2001 (8) Supreme Court Cases 491 in the case of Union of India and others v. Dinesh Engineering Corporation and,
another where Their Lordships have observed as follows:-,

16. But then as has been held by this Court in the very same judgment that a public authority even in contractual matters should not have",
unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities, they are",
bound to follow the norms recognised by courts while dealing with public property. This requirement is necessary to avoid unreasonable and,

arbitrary decisions being taken by public authorities whose actions are amenable to judicial review. Therefore, merely because the authority has",
certain elbow room available for use of discretion in accepting offer in contracts, the same will have to be done within the four corners of the",
requirements of law, especially Article 14 of the Constitution. In the instant case, we have noticed that apart from rejecting the offer of the writ",
petitioner arbitrarily, the writ petitioner has now been virtually debarred from competing with EDC in the supply of spare parts to be used in the",
governors by the Railways, ever since the year 1992, and during all this while, we are told the Railways are making purchases without any tender",
on a proprietary basis only from EDC which, in our opinion, is in flagrant violation of the constitutional mandate of Article 14. We are also of the",
opinion that the so-called policy of the Board creating monopoly of EDC suffers from the vice of non-application of mind, hence, it has to be",
quashed as has been done by the High Court."",

26. In the aforesaid case with due respect we found that although Railway invited tender for supply of spare parts for use in GE governors but,
selected one EDC company on the assumption that there was no other party to supply such spares with the requisite degree of sophistication,"
complexity and precision. Such policy decision is arbitrary and non-application of mind without examining the characteristics of the spare parts,
supplied by the writ petitioner. In that case Their Lordships held it as violative of Article 14 of the Constitution for which concurred with the view,
of the High Court against which Civil Appeals were preferred. So, the Hon"ble Apex Court also interfered with the policy decision which was",
issued without application of mind and suffers from requirements of law especially Article 14 of the Constitution.,

27. It is reported in (2002) 6 Supreme Court Cases 562 in the case of Kailash Chand Sharma v. State of Rajasthan and others where,

Their Lordships have observed as follows:-,

33. The above discussion leads us to the conclusion that the award of bonus marks to the residents of the district and the residents of the rural",
areas of the district amounts to impermissible discrimination. There is no rational basis for such preferential treatment on the material available,
before us. The ostensible reasons put forward to distinguish the citizens residing

in the State are either non-existent or irrelevant and they have no, nexus with the object sought to be achieved, namely, spread of education at primary level. The offending part of the circular has the effect of", diluting merit, without in any way promoting the objective. The impugned circular dated 10.6.1998 insofar as the award of bonus marks is", concerned, has been rightly declared to be illegal and unconstitutional by the High Court."

34. One more serious infirmity in the impugned circular is that it does not spell out any criteria or indicia for determining whether the applicant is a, resident of rural area. Everything is left bald with the potential of giving rise to varying interpretations thereby defeating the apparent object of the, rule. On matters such as duration of residence, place of schooling etc., there are bound to be controversies. The authorities, who are competent to", issue residential certificates, are left to apply the criteria according to their thinking, which can by no means be uniform. The decision in State of", Maharashtra v. Raj Kumar is illustrative of the problem created by vague or irrelevant criteria. In that case a rule was made by the State of, Maharashtra that a candidate will be considered a rural candidate if he had passed SSC Examination held from a village or a town having only "C", type municipality. The object of the rule, as noticed by this Court, was to appoint candidates having full knowledge of rural life so that they would", be more suitable for working as officers in rural areas. The rule was struck down on the ground that there was no nexus between the classification, made and the object sought to be achieved because ""as the rule stands any person who may not have lived in a village at all can appear for SSC", Examination from a village and yet become eligible for selection"" (SCC p.314, para 2). The rule was held to be violative of Articles 14 and 16."

When no guidance at all is discernible from the impugned circular as to the identification of the residence of the applicants especially having regard, to the indefinite nature of the concept of residence, the provision giving the benefit of bonus marks to the rural residents will fall foul of Article 14.""",

With due respect we found the Hon"ble High Court declared the circular as illegal and unconstitutional, and the same has confirmed by Hon"ble",

Apex Court by observing that when no guidance at all is discernible from the impugned circular as to the identification of the residence of the,

applicants especially having regard to the indefinite nature of the concept of residence, the provision for giving the benefit of bonus marks to the",

rural residents will fall foul of Article 14. On the other hand the provisions of Article 14 are violated by issuance of such circular.,

28. With due respect to the said decisions we are of the considered view that the impugned Clauses in the Guidelines issued by the opposite,

parties having been unreasonable, improper, non-application of mind and violative of Article 14 and Article 21 of the Constitution of India, can be",

interfered herein as the pleas of the opposite parties do not meet the required parameters of law. We find, the contention of the learned counsel for",

the opposite parties that the courts should not interfere with the policy decision of the State Government is untenable.,

29. Since we have already observed above that Clause I (6) in the Guidelines 2014-2015 and F (5) in the Guidelines 2015-2016 are arbitrary,"

unreasonable, discriminatory and against constitutional provision, the policy decision of the State Government in retaining such clauses in the",

respective Guidelines can be interfered with for the reasons stated above. So far Clause K (2) in the Guidelines 2015-2016 is concerned, it is",

discernible with objective as that clause will come to operation after the students got admitted but before completion of the course he or she,

resigns, he or she has to pay penalty. Such clause in no way is violative of principle of law. On the other hand, we are of the view that the relevant",

clause in the prospectus of AIIMS, New Delhi is more acceptable and reasonable and it does not at all create any embargo for the students to",

prosecute higher medical study for subsequent years except penalising them in terms of payment of cost.,

30. In course of hearing, this Court has directed to consider for revisiting the necessary prospectus to be issued for admission in P.G. courses",

during 2016-2017 and the learned Additional Government Advocate agreed to take decision by Government. It is profitable to quote the relevant,

portion of the order dated 20.11.2015 in the following manner:-,

6. 20.11.2015 We are of the considered view that the examples of All India Institute of Medical Sciences (AIIMS), New Delhi and the",

Postgraduate Institute of Medical Education and Research, Chandigarh ought to be also taken into consideration by the State, since we are of the",

considered view that, in this manner loss to the State exchequer, if any, can be compensated and the students who have opted out of the courses",

for joining, are not debarred for their future education. We may also record that, denying in-service students further opportunity of enhancing their",

knowledge by pursuing Postgraduate and other higher degrees, can in no manner in the interest of the State since such in-service candidates will",

continue to work for the State after completion of the courses which they are admitted into. We are, therefore, of the considered view that the",

State ought to take the aforesaid aspects into consideration while framing the guidelines for admission into the year 2016-17."",

It is lamented to observe that no decision could be taken so far as Mr. Mohanty appearing for the O.P.Nos. 3 and 4 informed the Court that the,

decision is yet to be taken. Since we have found that Clause I (6) in the Guidelines 2014-2015 and Clause F (5) in the Guidelines 2015-2016 are,

violative of Article 14 and 21 of the Constitution of India, these Clauses are liable to be quashed. Rather, the State Government should delete such",

Clauses in the Guidelines 2016-2017 by incorporating likewise Clause D(2) of the AIIMS as published in the prospectus of 2015-2016 of,

AIIMS, New Delhi to safeguard the interest of the State. Point No.(ii) is answered accordingly.",

Conclusion,

31. We have already held that the decision of the State Government with regard to Clause I (6) in the Guidelines 2014-2015 and Clause F(5) in,

the Guidelines 2015-2016 are liable to be quashed being violative of Article 14 and 21 of the Constitution, we hereby quash the same. We have",

already observed in the aforesaid para that the prospectus for admission in P.G. courses 2016-2017 should not repeat the same clauses as of,

2014-2015 and 2015-2016 but should insert the Clause D (2) of the prospectus of AIIMS, New Delhi to safeguard the interest of the State and",

the candidates, it is apposite for the opposite parties to incorporate the same in the prospectus for 2016-2017 and accordingly we direct.",

32. During course of argument, it is brought to the notice of the Court that the petitioner has already appeared in the entrance test for admission to",

P.G. course during 2016-2017, we hereby direct the opposite party No.2 to permit the petitioner to attend the counselling if he has qualified in the",

test conducted for admission to P.G. course for the year 2016-2017 and subject to insertion of Clause as directed in aforesaid para in the, prospectus for 2016-2017. The writ petition is disposed of accordingly.,