
(2013) 08 P&H CK 0916
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No.1416 of 2013

Dr. Subhash Chander Meel and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 31-08-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 5

Citation : (2014) 2 SCT 478

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Augustine George Masih, J

Bench : Division Bench

Advocate : Rajiv Atma Ram, with Mr. Arjun Pratap Atma Ram, Nos. 1 and 2 and Mr. Navdeep Chhabra, No. 3, for the Appellant; Hitinder Singh Lalli, Addl. A.G., Haryana for the State-Respondent No. 1, Mr. Ramesh Hooda, Advocate for Respondent Nos. 2 and 3, Mr. J.S. Yadav, Advocate for Respondent No. 4, Mr. Anupam Gupta with Ms. Shruti Gupta and Mr. Karan Singh Sandhu, Advocates for Respondent Nos. 5 and 10, Mr. Rajbir Sehrawat, Advocate for Respondent Nos. 6 and 19, Mr. Vikas Chatrath, Advocate for Respondent Nos. 7 and 9, Mr. Sanjay Jain, Advocate for Respondent No. 16, Mr. Rajesh Shoran, Advocate for Respondent No. 21, Mr. Rajeshwar Singh Thakur, Advocate for Respondent No. 22, Mr. Deepak Sibal, Advocate for M.C.I.-respondent No. 23, for the Respondent

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—The present appeal has been preferred by the petitioners (appellants herein) against the judgment dated 18.7.2013 passed by learned Single Judge, vide which their claim for consideration for admission to the Post Graduate Courses under the category of HCMS reserved quota of the State of Haryana stands rejected. The brief facts are that the appellants are serving as doctors in the Department of Health, Haryana, and they fulfilled the eligibility requirements for consideration for admission to the Post Graduate Degree/diploma in Medical Sciences for the Session 2013 against the HCMS seats in the Haryana quota. No objection certificates to the appellants were issued by the competent authority for considering their case for admission against the seats reserved for HCMS quota. The appellants, in pursuance to the notices

issued by the National Board of Examinations (hereinafter referred to as "the Board"), for National Eligibility-cum-Entrance Test (Post Graduate), 2013 (hereinafter referred to as "NEET-PG 2013") for admission to MD/MS/Post Graduate Diploma Courses 2013 Admission Session, applied and participated in the said test held on 26.11.2012 and result thereof was declared on 31.1.2013.

2. Appellants, as per the requirement of the application form issued for NEET-PG 2013, submitted their forms, mentioning their domicile of the State to which they originally belonged. They were required to fill in the State from where they had done their Graduation/M.B.B.S., which was also given by them. In the result so declared for NEET-PG 2013, three lists were prepared. The first of such lists had declared the result of all candidates on all India merit basis, the second list was showing the merit list of the candidates of the State from where they had passed their Graduation/M.B.B.S. and the third list was based on merit of the opted domicile State list of the candidates. Since the appellants had opted the domicile for the State of Punjab and Rajasthan from where they originally belonged, their names were included in the respective lists of those States as per their merit.

3. Prospectus was issued by the Pandit B.D. Sharma University of Health Sciences, Rohtak (hereinafter referred to as the "respondent-University") for admission through counselling to M.D./M.S., P.G. Diploma and M.D.S. Session 2013. Appellants submitted their application forms for participating in the counselling for the purpose of admission under the State quota as in-service candidates (HCMS) seats but they were not allowed to do so. Request submitted by the appellants was rejected on the ground that their names do not figure in the State merit list of Haryana and, therefore, cannot be permitted to participate in the counselling.

4. Appellants, at this stage, had approached this Court, challenging the action of respondent No. 3-Director, PGIMS, Rohtak, who was the Chairman of the Counselling Board. The challenge to the action of respondent No. 3 in the writ petition was based on the ground that as per the prospectus issued by the respondent-University, the appellants were eligible in all respect for consideration of their claim for admission against the HCMS quota seats, for which they had been issued no objection certificates by the competent authority to consider their claim against the said quota seats. As per the prospectus, admissions have to be based upon the merit of candidates in NEET-PG 2013. Appellants, being higher in merit in comparison to the private respondents, were required to be considered as per their merit for admission to HCMS quota seats in the counselling held on 27.5.2013. The second ground taken was that the Board had framed three ranking list, first being the All India merit list, second the list from the State the candidates had passed their Graduation/M.B.B.S. and the third list was from the State the candidates had opted for their domicile. Since the appellants were originally residents of the State of Punjab and Rajasthan respectively and accordingly they had adopted the domicile of those States. Merely because their names do not figure in the Haryana State ranking list, was not a valid ground to

reject their claim for consideration under the HCMS quota seats, ignoring the All India level ranking list. To consider the claim against HCMS quota, there is no such condition that the candidates must have passed their M.B.B.S. from the State of Haryana or should be domicile of the State. The only eligibility condition for consideration of the claim of a candidate against the HCMS quota is that he should have four years service as a Medical Officer, which should include two years in rural areas, which condition is fulfilled by the appellants as they have been issued the no objection certificates by the competent authority.

5. The third ground taken for assailing the action of the respondents is that the HCMS quota merit list has not been prepared by the Board, which had conducted the NEET-PG 2013 test and rather the same has been prepared by the respondent-University only from the State list of Haryana, which is illegal on the ground that the requirement for consideration under the HCMS quota is not dependent upon a candidate being domicile of the State of Haryana as that is not a condition specified under the policy of the State of Haryana dated 23/27.12.2011, which deals with the purpose and eligibility condition regarding higher studies (Post Graduate level) for doctors in the Department of Health. Another ground taken for assailing the action of the official respondents is that the basic principle of merit has been given a go-bye, which would be violative of Article 14 of the Constitution of India as the appellants admittedly are higher in All India ranking list than the private respondents and, therefore, will have precedence for consideration for admission to the Post Grade courses against the HCMS quota seats, as the appellants fulfill the policy requirements for eligibility as provided by the Government of Haryana dated 23/27.12.2011.

6. Learned Single Judge, while considering the pleas as raised by the appellants, had come to a conclusion that the public notice issued by the Board dated 3.10.2012, categorically provided that the candidates desirous of having a merit position in their category are required to opt for particular State/Union Territory as per their domicile in which they would like their candidature to be considered and the appellants having opted for domicile for the States of Rajasthan and Punjab to be their domicile, cannot now turn around and claim that their candidature should be considered against the seats which are earmarked for the State quota, out of which a sub-category of HCMS quota has been carved out. In this public notice, it was clearly mentioned that the applicants have to opt for only one State/Union Territory as a domicile. It has further been observed that the appellants herein had intentionally opted for domicile of their respective State of origin for the reason that there were 11 Medical Colleges in the State of Rajasthan and 9 in the State of Punjab as compared to the State of Haryana, where there are only two Medical Colleges. The appellants probably were of the view that they had more chances of getting admission in their States of origin, which they had opted than in the State of Haryana. Having taken a conscious decision on this aspect, the appellants cannot be permitted now to claim admission against the seats falling in the State quota of Haryana out of which 40% are kept for HCMS doctors.

7. Learned Senior counsel for the appellants submits that as per the judgment of the Supreme Court in the case of Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , the Constitution of India under Article 5 recognizes only one domicile, namely, domicile of India. Admission to the M.D./M.S. Course, on the basis of domicile of State of Haryana, thus, cannot sustain. The domiciliary requirements for admission to the Post Medical Colleges situated within the territory of Haryana, thus, would mean residence and is intended to convey the idea of intention to reside permanently or indefinitely. Since the appellants are working as Medical Officers in the Department of Health on regular basis, they are to be treated as domicile for the State of Haryana and, therefore, they cannot be ousted for consideration under HCMS quota, especially when they fulfilled all the conditions as are specified as per the Haryana Government policy dated 23/27.12.2011, particularly when considering the said policy, no objection certificates have been issued to the appellants by the competent authority for claiming admission in M.D./M.S. P.G. Diploma Courses against the HCMS quota seats. The appellants have truly and faithfully given their domicile of the State to which they originally belonged as the domicile of a person does not change with his place of service or residence and, therefore, having fulfilled the requirements mandated under the policy of the Department of Health of the State of Haryana for consideration under the HCMS quota seats, the non-consideration of their claim, would be violative of the policy of the State itself.

8. Referring to the policy and eligibility conditions mentioned therein, the learned Senior counsel contends that the only requirement for in-service candidates is that M.B.B.S./B.D.S. doctors will be eligible for doing Post Graduate Courses, both degree as well as diploma after completion of four years of regular satisfactory qualifying service with two years service in rural areas. The said condition having been fulfilled by the appellants and no objection certificates issued by the competent authority, which policy does not mandate a candidate to be a domicile of the State of Haryana for consideration under the HCMS quota seats, depriving the benefit of the said policy to the appellants, would be illegal and not sustainable. He submits that the condition of domicile is only for open category seats of the State quota and has no relationship or applicability to the seats reserved for HCMS quota, which is an exclusive class in itself and admission to this quota is solely dependent and would be guided by the policy of the State of Haryana dated 23/27.12.2011. The other conditions as specified in the prospectus would be applicable only to the open category candidates. Referring to Clause 5 of the eligibility condition under the prospectus, Annexure P-1, he asserts that for HCMS doctors, it has only been provided that they will be considered for admission after receipt of no objection certificates from their employer before or on the date of first counselling as per the Haryana State Government policy framed from time to time. Referring to Clause 7, he submits that the admission is to be made through counselling according to their merit based on NEET-PG 2013. Appellants, being higher in merit than the private respondents, are required to be considered for counselling and allocation of seats

in the HCMS quota. The list prepared by the respondent-University basing it merely on the domicile State list as prepared by the Board is, thus, not sustainable and deserves to be set-aside and direction be issued to the respondents to prepare a fresh HCMS quota list on the basis of policy decision of the Government of Haryana, which determines the eligibility of the candidates and thereafter grant admissions to the candidates as per the merit list. Prayer has, thus, been made for setting-aside the judgment of learned Single Judge and allowing the writ petition.

9. On the other hand, the learned counsel for the respondent-University submits that the eligibility of the candidates for admission to M.D./M.S./P.G. Diploma is as per the eligibility criteria laid down in Chapter IV of the prospectus issued by the respondent-University. The requirement, as per Clause (ii) at Sr. No. 1 is that the candidate should have passed M.B.B.S. Examination from the recognized University/Institution situated in Haryana as a bonafide resident of Haryana or has passed M.B.B.S. Examination from any Medical/Dental College/Institution recognized by the Medical/Dental Council of India and who/whose parents produce(s) a Haryana Resident Certificate as per the instructions given in Annexure "A" to the prospectus. The admission procedure has been adopted strictly as per Chapter IV at Column 7 of the prospectus.

10. The information bulletin of the NEET-PG for admission for 2013 Session, in Column 8.1 states that merit list shall be published All India-wise and State-wise with reservation to be as per the State Government guidelines. Column 8.3 thereof, which deals with domicile, clearly states that the guidelines of each State/Union Territory shall be applicable in respect to the seats owned/controlled by them respectively. The seats which are to be filled, including the HCMS category seats, are of the State of Haryana quota and, therefore, the guidelines issued by the State of Haryana with regard to domicile have to be taken into consideration. In pursuance thereof in the prospectus issued by the University, instructions for the applicants have been given for filling up the application form and in Column No. 2 under the heading " personal information" at Page 25 of the said prospectus, it is clearly mentioned that the candidates are required to choose their domicile State. The position with regard to this has been further clarified in the public notice dated 3.10.2012 issued by the Board, which clearly cautioned the candidates to verify the status of domicile policy/State policy as well as their own eligibility for the same before opting for State of domicile. Appellants having consciously opted for the domicile other than the State of Haryana, though they being eligible for opting for domicile of Haryana State, now their change in option for State of Haryana cannot be permitted. The application forms to be submitted by the candidates for admission to M.D./M.S./P.G. Diploma courses, as per the prospectus issued by the respondent-University, clearly showed that they were required in Column No. 2 to fill up their rank of Haryana State merit list, which leaves no doubt that only the State merit list candidates were to be considered for admission to the Post Graduate courses for the seats falling in the State quota, whether open or for HCMS category. Thus, the

candidates were made fully aware of the situation and were free to choose the State as domicile, which the appellants have opted for as per their choice despite instructions issued by the Government of Haryana published alongwith the prospectus.

11. Counsel contends that even as per the policy regarding higher studies (Post Graduate level) issued by the Government of Haryana dated 23/27.12.2011 for doctors of the Department of Health in Para (vii), it has been mentioned that after the no objection certificate is issued to the applicant, his/her admission will be governed by the admission rules of the concerned Institution/University. The "no objection certificate" is required not only for the HCMS doctors to be eligible for consideration under the HCMS quota but also against the open seats in the Government Colleges of Haryana or any other State or well established and reputed private medical institutions recognized by the Medical Council of India for sponsorship against the MD/MS reserved seats. The basic eligibility for admission to the Post Graduate against the HCMS quota seats was, thus, domicile of Haryana, for which the appellants could have obtained and produced the certificate from their employer i.e. Director, Health Services, Haryana, being regular employees of the Haryana Government. Since they opted for consideration for admission to Post Graduate courses in the State of Punjab and Rajasthan instead of State quota seats in Haryana, they are only eligible for admission against 50% seats offered at the All India level on the basis of their All India rank list but not for Haryana State quota seats, as the 40% HCMS quota seats are part of Haryana State quota seats only, which has to be filled up as per the merit of the Haryana State rank list prepared by the Board based upon the All India merit of NEET-PG 2013. Admissions in the HCMS Quota seats is to be done on the basis of merit list prepared by the respondent-University on the basis of the marks obtained by the applicants as per Haryana State list of NEET-PG 2013 examination, in which list the names of the appellants do not figure as their names are not existing on the State rank list issued by the Board.

12. Counsel for the private respondents have also reiterated the submissions as have been made by counsel for respondent Nos. 2 and 3 and have contended that the judgment passed by the learned Single Judge is in accordance with law and does not call for any interference by this Court. Prayer has, thus, been made for dismissal of the appeal.

13. We had heard the counsel for the appellants and the counsel for the respondents at length on 26.8.2013 and in view of the submissions advanced by them, we considered it appropriate to implead the Board, which carried out the NEET-PG 2013 examination and the Medical Council of India as respondent Nos. 22 and 23 respectively to have their view and, thus, notice was issued to these added respondents.

14. Counsel for the Medical Council of India states that it has no concern with the issue of domicile and there are no instructions of the Medical Council of India on this point.

15. However, counsel for the Board submits that the NEET-PG 2013 Information Bulletin dealing with reservation of seats in the Medical Colleges/Institutions for respective categories shall be as per applicable laws prevailing in the States/ Union Territories. In this regard, reference has been made to Clause IV under the heading "Introduction" at page 5 of this Bulletin. He has also referred to the clarification issued through public notice dated 3.10.2012 by the Board referring therein to the policy of the State concerned with regard to the domicile and the candidates to exercise their options after verifying the status of domicile policy/ State policy vis-a-vis their eligibility and claim. This clarification made it amply clear that the candidates can opt for only one State/Union Territory as their domicile. He, on this basis, contends that the candidates having opted after considering and weighing the pros and cons of the policy of the State, which was most beneficial to them, cannot now be allowed to change their domicile. He has also referred to Clause 8 of the Information Bulletin, which deals with reservation and domicile, especially Clause 8.3, which provides that the guidelines of each State/Union Territory shall be applicable in respects of seats owned/controlled by them respectively.

16. We have considered the submissions made by counsel for the parties and with their assistance have gone through the records of the case.

17. The first assertion of the counsel for the appellants is that they having truthfully disclosed their domicile, which according to them is the State of their origin, they cannot be penalised for the same. Referring to the judgment in the case of Dr. Pradeep Jain's case (supra), his contention is that there is only one domicile and that is of India and no other domicile is permissible or can be taken for admission to the Post Graduate Colleges.

18. This contention of the counsel for the appellants cannot be accepted in the light of the observations made by the Constitutional Bench of the Supreme Court in Para 29 in the case of Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, , wherein Dr. Pradeep Jain's case (supra) was also taken into consideration. It has been held that there is a distinction between the expression "place of birth" and the expression "domicile", which reflects two different concepts and held that the reservation on the basis of domicile is permissible.

19. It may not be out of way to mention here that domicile, as provided under the NEET-PG 2013 information bulletin or as provided under the prospectus, which is a sacrosanct document, issued by the respondent-University is not under challenge. None of the provisions or the criteria has been assailed by the appellants. There being no challenge to the conditions as specified in the above two basic documents, on which the admission to the Post Graduate courses hinges, we are left with the only option i.e. to see whether the appellants have any right based on these, which would entitle them to the claim as made by them in the present proceedings. It needs to be added here that had the appellants opted for challenge to any of the clause dealing with the domicile, it would have been too late in the day having participated in the selection process

and accepted the terms and conditions laid down therein.

20. If that be so, the next question which would be required to be addressed is as to whether for admission under the HCMS quota to a Post Graduate Course, the requirement of a person being a domicile of State of Haryana is mandated?

21. For this, the answer lies in the very basic concept adopted for allocation of seats, which flows from allocation of seats to separate quota, which has been carved out on the basis of the nature of seats. Reference in this regard can be made to Chapter III of the prospectus issued by the respondent-University. In this, total seats in the State of Haryana for admission to Post Graduate Degree Courses are mentioned as 145, out of which 50% are meant for All India quota, which comes to 73 and the remaining 50% seats are reserved for the State quota, which has further been sub-classified into HCMS reserved quota, being 40% of the State quota with seats coming to 29 and the remaining 60% seats out of the State quota is earmarked for the open merit seats i.e. 43. The general conditions applicable to the seats falling in the share of State quota has been spelt out in Chapter IV of the prospectus issued by the respondent-University. Clause 1 lays down the requirement common to all categories and this position is clear from Clause 2, which mandates production of the certificates as mentioned in Clause 1 at the time of counseling. Clause 5 deals with the eligibility required for HCMS doctors in addition to the other eligibility conditions. Clause 7 deals with the counselling, which has to be according to the merit based on NEET-PG 2013 and the notifications issued by the MCI as well as DCI referred to therein. Chapter IV of the prospectus reads as follows:-

ELIGIBILITY

1. A candidate for admission to MD/MS/PG Diploma, MDS courses will be eligible if he/she:

i) is a citizen of India.

ii) has passed MBBS/BDS examination from recognized University/Institution situated in Haryana as a bonafide resident of Haryana or has passed MBBS/BDS examination from any other Medical/Dental College/Institution recognized by the Medical/Dental Council of India and who/whose parents produce(s) a Haryana Resident Certificate as per Govt. instructions given in Annexure A & B.

iii) has completed satisfactorily one year compulsory rotating internship from centers recognized by the Medical/Dental Council of India for this purpose by 31.03.2013.

iv) is registered permanently with State Medical/Dental Council (MCI/DCI) at the time of admission.

v) possesses a certificate of good conduct from the head of the institution last attended.

2. The candidate will also submit, in original, the above mentioned certificates at

the time of counseling without which admission to P.G. course shall not be granted.

3. A student who is already admitted to any course in any institution can only be eligible to apply for any other course only after passing the first course. An undertaking to this effect will be obtained from the candidate. Concealment of facts would invite disqualification.

4. After commencement of PG Courses (Degree/Diploma), if a candidate having joined the course leaves it before completion of full period:-

a) He/she will be debarred for next three years from applying for admission to any PG Course (Degree/Diploma) in these Institutions.

b) He/She will have to pay the Bond Money Rs. 5,00,000/- for PG degree/ Diploma course for which Bond shall be executed at the time of admission.

5. HCMS doctors will be considered for admission after receipt of NOCs from their employer before or on the date of first counselling i.e. 27/28.5.2013 as per Haryana State Govt. policy framed from time to time.

6. The HCMS doctors who join PG courses against reserved seats and leave the course in between will be debarred for five years to join PG courses in these institutions.

7. Admission will be made through counselling according to their merit based on NEET-PG-2013 and MCI notification dated 21.12.2010 & 15.2.2012 as well as DCI notification dated 31.5.2012.

(Emphasis supplied by us)

22. Annexure A as referred to in Clause 1(ii) above lays down the criteria for obtaining benefit of the bonafide Haryana resident, wherein it deals with different categories and the basis depending upon various factors for issuance of the said certificate, which has also been termed as a domicile certificate, such as passing of qualifying examination from the State, residence in the State, employee of the Haryana State Government, employee of Government of India posted in Chandigarh or in Haryana on deputation with the Government of Haryana, regular employee of the statutory bodies/Corporations established by or under the Act by the State of Haryana, children/wards of retired employees, who have permanently settled in Haryana and draw their pension, persons who were born in Haryana etc. It can, thus, be said that there is a rational criteria laid down for obtaining the benefit of a bonafide Haryana resident which has been termed as a domicile certificate. Each candidate, who intends to take the benefit as a domicile of the State of Haryana, has to submit a certificate obtained from the competent authority. This certificate has to be submitted in original at the time of counselling, without which admission to P.G. Course shall not be granted. (Clause 2 above) The contention, thus, of the learned Senior counsel for the appellants that for HCMS doctors, the condition of being a bonafide resident of Haryana,

which has been termed as a domicile certificate is not essential, cannot be accepted in the light of the above.

23. A plea has been raised that the appellants fulfill the requirement of the policy regarding higher studies (Post Graduation level) for the doctors of the Department of Health dated 23/27.12.2011 and have been issued no objection certificates, therefore, the HCMS doctors have to be treated as a class apart and this policy would exclusively govern the conditions of admission, which would, thus, not require a domicile certificate to be produced.

24. The relevant provisions of the policy in question are reproduced herein below:-

Subject: Revision of Policy regarding Higher Studies (Post Graduation Level) for Doctors in the Department of Health.

Refer to the subject noted above.

I have been directed to invite your attention to the subject mentioned above and to state that the admission of MBBS/BDS doctors for higher studies leading to Diploma/PG Degrees/Super Specialty Courses so far was governed by the policy circulated by the Health and Medical Education Department vide its memo NO. 2/123/2005-1 HB-1, dated 31.3.2011. In order to build a strong resource base of specialist doctors and to facilitate the MBBS doctors in HCMS Cadre to acquire MD/Diploma/Degree, the existing policy has been amended after wide consultations. It has been decided to supersede the aforementioned policy dated 31.3.2011 & 05.12.2008 and issue fresh policy as follows. This policy will come into force from academic year 2011-2012:-

I. MBBS/BDS doctors will be eligible for doing Post Graduate Course, both degree as well as Diploma, after completion of four years of regular satisfactory qualifying service with two year rural service. Only the persons fulfilling this condition will be eligible for sponsorship against reserved seat in PGIMS, Rohtak or other Government Institution, and against the open seats in the Government Colleges of Haryana or any other state or well established and reputed Private Medical Education Institutions, recognized by Medical Council of India (MCI). Only 15 candidates will be sponsored per year in these Private Institutions which are recognized by Medical Council of India (MCI) and are approved by Government of Haryana from time to time.

Eligible persons of this category will be entitled to draw full salary as they were drawing and the period spent on the prescribed duration of course will be treated as service for all intent and purposes. They will receive stipend, if paid by the institution and such stipend so received will be deposited in the State Treasury. They will be required to give a certificate in this regard attested by the Institution to Director General Health Services, Haryana.

II. No doctor will be allowed to go for any Post Graduation Course before completion of four years of regular satisfactory qualifying service including two

years rural service. Such persons will have to resign from service in case they insist. However, the condition of rural service will not be applicable in the case of member of the HMES.

III. The applicant doctors should have completed 4 years of service on the last date of application given in the prospectus.

IV. In HCMS doctors can choose to do any PG Degree in PGIMS, Rohtak. However, in case of sponsorship of seats reserved for in-service candidate in Government Institutions or doctors going in private colleges. HCMS doctors will be sponsored only following disciplines:-

xx xx xx

Under this policy doctors will be sponsored for higher studies with full pay, subject to other conditions in respect of these aforementioned specialties only. No HCMS/Dental doctors will be allowed to PG or any other course in correspondence distance learning mode. In case of admission in the private institution the fee and other charges for the course or hostel etc. will be paid by the candidate himself. If any doctor after four years of satisfactory qualifying service wishes to do PG course in any other specialty in the private institutions, he will have to seek extra ordinary leave without pay. His service, however, will be protected for the purpose of increments, seniority and pension. Such persons will also be entitled to stipend if available in the Institution.

V. xx xx xx

VI. Persons desirous of undertaking the Higher studies will have to obtain an NOC from the State Government before submitting their applications to the Institutions concerned for admission in the course. Any application submitted without NOC of the competent authority will not be considered eligible for various benefits under this policy.

VII. Person desirous of undertaking higher studies for Super Specialty/P.G. Diploma/P.G. Degree courses against the reserved as well as open seats will be required to apply for a "No Objection Certificate" to the competent authority. No doctor can ask for an NOC for PG course as a matter of right. However, the State Government may grant NOC subject to the following conditions:-

(i to x) xx xx xx

VIII to XI. xx xx xx

XII. This policy will supersede all the previous policies issued by the Govt. for Medical/Dental doctors.

(Underlining is ours)

25. It is not in dispute that the appellants as per the above policy fulfill the requirement, which rendered them eligible for consideration to the seats earmarked for the HCMS quota. However, in the light of the eligibility criteria laid

down in the prospectus, which has been referred to above, requirement of the domicile certificate is an essential condition for consideration under the State quota seats. Mere issuance of a no objection certificate would not be enough, thus, for a candidate to be considered under the HCMS quota seats. It may, however, be added that all HCMS doctors, who are desirous of undertaking higher studies against the reserved as well as open seats, are required to apply for no objection certificate to the competent authority, as is apparent from clause VII reproduced above. This obviously means that every HCMS doctor desirous of undertaking higher studies is mandated to obtain a no objection certificate, irrespective of the fact whether he seeks admission against the reserved seats or open seats.

26. Having held that the requirement of a domicile certificate as a bonafide resident of Haryana, as per the Government instructions provided for under Annexures A and B attached to the prospectus under Clause I (ii) of Chapter IV as mandatory for consideration under the State quota seats. The question would be whether the appellants could have opted for Haryana domicile?

27. The answer to this has to be in the positive, for the reason that the appellants admittedly were eligible as per the requirements provided for in Clause 1(ii) of Chapter IV of the prospectus. They further fulfilled the requirement of Clause 5 of Chapter IV as they had obtained the no objection certificates from their employers. The information bulletin of NEET-PG 2013 under Clause 1 "Introduction" sub-clause (IV) at Page 5 provides with regard to reservation as follows:-

IV. The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Post Graduate courses from the said merit lists only.

28. This position has been further clarified under Clause 8 dealing with reservation and domicile at Page 20. Relevant Clauses are 8.1 and 8.3 for the purpose of the present case, which read as follows:-

Reservations and Domicile:-

8.1 As per the PG Medical Education Regulations, Merit list shall be published State wise & All India list. Reservations as per Government of India Guidelines/ State Government Guidelines/PG Medical Education Regulations/rules & Regulations shall be provided for Scheduled Castes (SC), Schedule Tribes (ST), Persons With Disabilities (PWD), Other Backward Classes (OBC) at eligible class of Institutions/Colleges.

8.2 xx xx xx

8.3 Domicile - Guidelines of each State/Union Territory shall be applicable in

respect of the seats owned/controlled by them respectively.

29. A perusal of the above would show that as regards a domicile, it was mentioned that guidelines of each State/Union Territory would be applicable in respect of seats owned/controlled by them. Since many candidates enquired about their eligibility for determination of the State merit, a clarification regarding domicile and merit list, relating to All India and State merit was issued through a Public Notice dated 3.10.2012, relevant part of which reads as follows:-

National Board of Examinations

(NEET-PG)

Dated: October 3rd, 2012 PUBLIC NOTICE

Subject: Clarification regarding Domicile and Merit List - All India & State Merit.

Reference:- National Eligibility-cum-Entrance Test-Post Graduate.

In reference to the National Eligibility-cum-Entrance Test-Post Graduate (NEET-PG) (Scheduled to be held from 23rd November-6th December, 2012); Applicant candidates have enquired regarding their eligibility for the determination of state merit and admissions to institutions of Armed Forces Medical Service (AFMS), Ministry of Defence, Government of India.

The above referred issues are clarified as follows:-

1. All India Merit List:- All the applicants for NEET-PG examination shall be given a percentile based merit rank position as per the criteria prescribed in the PGME Regulations (duly amended) and indicated in Information Bulletin.

2. State Merit List: The State List shall be prepared from the following:-

a. Based on state of Graduation/MBBS: Each candidate shall be assigned a state level percentile merit rank in the state merit list from the State/Union Territory of his/her graduation.

In respect of candidates who have qualified their graduation degree from foreign medical institutions their state wise merit position cannot be determined and accordingly shall not be issued.

b. Based on Domicile Criteria: (In respect of those candidates who have a domicile for a particular State/UT): Some states have a policy of allowing holders of bonafide domicile to pursue post graduation (MD/MS/PG Diploma) at respective institutions in that state, despite of the candidates having their graduate qualification from other states/Union Territories/foreign medical institutions.

Candidates desirous of having a merit position under this category are required to opt for the particular state/Union Territory as their domicile in which they would like to be considered.

However, before making such claim the candidates are required to verify from the respective state governments and the applicable rule position, if at all they will be considered for admission to Post Graduate seats based on domicile criteria.

No claim or query in this regard shall be entertained by NBE/MCC/MOHFW or any other counselling or admission granting authority or any legal rights shall arise in favor candidate. If Government/Counseling authority/Admission granting authority does not entertain the claim of candidate for grant of admission to PG seats on the basis of domicile criteria.

The applicant candidate can opt for only one state/union territory as domicile.

3. Admission to Institutions of Armed forces Medical Services:-

xx xx xx

Candidates are once again cautioned to verify the status of domicile policy/state policy as well as their own eligibility for the same before opting a state of domicile.

No claim/counter claim/change of state shall be entertained at any stage of NEET-PG after the registration of candidates has been completed at the NEET PG Portal.

(Underlining is ours)

30. When we go through the above clarification, it is clear that there would be one All India merit list and two State merit lists, one based on the State of Graduation/M.B.B.S. and the other based on domicile criteria. Under this head, it was clearly mentioned that States have their own policies and allow holders of bonafide domicile to pursue Post Graduation in their Institutions despite the candidates having their Graduation qualification from other States/Union Territories/Foreign Medical Institutions. Those candidates, who were desirous of having a merit position under this category were required to give an option for that particular State/Union Territory to be their domicile, where they would like their candidature to be considered. Candidates were made aware of the fact that they should verify the applicable rule position of the respective State Governments to check their eligibility, where they would like their candidature to be considered for admission to the Post Graduate seats based on the domicile criteria. It was specified that a candidate could opt for only one State/Union Territory as his/her domicile. In the concluding part of the notice, caution was again issued to the candidates to check their eligibility before opting for the State of domicile and after registration, there can be no change of the State of domicile. This clearly spells out that a candidate, who is eligible as per the applicable rules and instructions of the State Government in more than one State, had an option and choice of choosing the State domicile, where he would like his candidature to be considered but that choice could be under this domicile category of one State only.

31. The appellants were made well aware of the terms and conditions with an

option to choose the choice of the State based on domicile criteria. Once the appellants having chosen States of Rajasthan and Punjab, where they would like their candidature to be considered under the category of domicile, they cannot now take a U-turn and assert consideration for admission under the seats, which are reserved for the State of Haryana, what to say of HCMS quota, which is a sub-category providing for reservation for in-service candidates. As per the State of their choice for consideration under the domicile criteria, their names figured in those State lists and having failed to obtain the seat in those States, the appellants, it appears, have now turned around to assert their rights on the seats, which are reserved for the Haryana State domicile candidates, which is not permissible as per the conditions referred to in above.

32. The observations and conclusion of the learned Single Judge in the judgment under challenge can be referred to here with benefit, which reads as follow:-

This argument of the learned counsel for the petitioners cannot be accepted because a public notice was issued on 3.10.2012 in which it was categorically provided that the candidates desirous of having a merit position in their category are required to opt for a particular State/UT as their domicile in which they would like to be considered. It is also provided that the candidate can opt for only one State/UT as domicile. It is not in dispute that the petitioners have filled in their domicile State/UT as Rajasthan or Punjab instead of Haryana. Had the petitioners opted for the domicile for the State of Haryana, the NEET would have prepared their State rank on the basis of domicile viz-a-viz other candidates, who had opted for domicile of State of Haryana and the petitioners would have been allowed to compete with them. But in the present case, the petitioners have opted the domicile of their respective States to which they belong, namely, Rajasthan or Punjab and accordingly their State rank of the domicile State has been prepared, as an example, in the case of one of the petitioner namely, Ranjeev Beniwal, his All India Rank is 19303, State Rank 1 pertaining to the State from which he had graduated is 1665 and State Rank 2, which he opted as a State of his domicile, is 1215. There is no State rank of his domicile of State of Haryana, therefore, respective merit for the candidates of the State of Haryana domicile is not available for the purpose of considering the petitioners as a candidate of State of Haryana domicile and accordingly, the petitioners were not allowed to join the counseling. Besides this, prima facie, it appears that the petitioners had opted for domicile of respective States for a purpose because there are 11 Medical Colleges in the State of Rajasthan and 9 Medical Colleges in the State of Punjab as compared to the State of Haryana where there are only 2 Medical Colleges, therefore, by opting for the State of Rajasthan and Punjab, petitioners, who belong to those States, were having much more chances of getting admission than the State of Haryana and it appears that when they could not get admission in their respective States, an attempt has been made to take admission in the State of Haryana in 40% quota, provided for the in-service HCMS Doctors.

Thus, it is needless to mention that once there was a public notice issued on 3.10.2012 calling upon the candidates to opt for a particular State as their domicile with a condition that the candidate can opt for only one State and the petitioners have opted the States other than the State of Haryana, they cannot turn around to contend that they have candidly opted the State to which they belong and were not aware of this fact that they would not be considered for counseling for claiming the 40% quota meant for in-service HCMS Doctors.

33. We are in full agreement with the above observations and conclusions as recorded by the learned Single Judge and found nothing which would call for any interference.

34. We, thus, find no merit in the appeal and, therefore, dismiss the same. The parties to bear their own costs.