

(1994) 08 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Amended C.W.P. No. 7001 of 1994

Meenal Sharma

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 30-08-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1995) 110 PLR 209

Hon'ble Judges : N.K. Kapoor, J;G.S. Singhvi, J;A.L. Bahri, J

Bench : Full Bench

Advocate : R.S. Mittal, Tarun Jain, A.P. Bhandari, A.K. Chopra, R.K. Malik, D.S. Pheruman, C.M. Chopra and S.P. Laler, for the Appellant; H.L. Sibal, A.G., Suresh Monga, DAG, Ashok Aggarwal and Vikrant Sharma, with him, for the Respondent

Judgement

G.S. Singhvi, A.L. Bahri and N.K. Kapoor, JJ.—I had the benefit of perusing the judgment of my learned brother A. L. Bahri, J., but have not been able to persuade myself to the view expressed therein especially with regard to question No. 1 as framed.

2. Petitioners have sought a declaration that the eligibility criteria to sit in the entrance test to be conducted by the State of Haryana for purpose of admission in Medical Colleges and Dental Colleges situate within the State of Haryana is violative of Article 14 of the Constitution of India and otherwise too against the principles of natural justice and the same is also not based on any reasonable classification and so deserves to be set aside. The petitioners have further claimed the relief that they be permitted to sit in the entrance test to be conducted by the Maharishi Dayanand University Rohtak.

3. Initially, the primary grievance of the petitioners in these set of writ petitions was that change in the eligibility criteria for the year 1994 has no-rational basis for the object intended to be achieved During the pendency of the writ petition, the respondents issued a corrigendum thereby giving certain concessions to the children and the wards (if parents are not living)/dependents of the persons

belonging to Haryana, who have studied 10th, 10 + 1 and 10 + 2 classes as regular candidates in recognised institution(s) in Chandigarh provided these children fulfill other eligibility conditions. These candidates were required to submit certificate of Haryana resident/domicile as State Government rules, along with an affidavit duly sworn by the parents/guardians of the candidates to the effect that his son or daughter/ward is not appearing in the entrance test of any State, Union Territory other than those of Haryana. Accordingly, the petitioners sought amendment of the petition which was granted in the interest of justice. Thus, the petitioners challenged the eligibility criteria stipulated for the year 1994 along with the corrigendum briefly noticed above.

4. Pursuance to the notice of motion issued by the Court, the respondent have put in appearance and filed written statement. Subsequently, amended written statement has also been filed by the Registrar, Maharishi Dayanand University, on behalf of respondent No. 2. The respondents have explained in detail as to the factum which impelled them to change the eligibility criteria earlier adopted. According to the respondents, it had come to their notice that candidates have succeeded in getting themselves admitted on the basis of bogus domicile certificates procured by them by corrupt means. The past experience of the University as well as Medical College, Rohtak was that the University was facing litigation as the person after arranging domicile certificate by filing wrong affidavit has been able to get himself admitted to MBBS/BDS course. Since no foolproof method could be evolved, it was at the behest of public persons, President Bar Association, Rohtak, President of the University College Students Association and Government College for Women Students Association and Secretary Haryana State Medical Teachers Association that the authorities chose to examine this matter and so the Director, Medical College, Rohtak, constituted a three members Committee to consider the memorandum and the representations submitted by the various organisations. The Three Members Committee consisted of (i) Dr. D.R. Yadav, Professor and Head, Department of Forensic Medicine, as Chairman; (ii) Dr. (Mrs.) Usha Dhall, Professor and Head, Department of Anatomy - Member; and (iii) Dr. D.R. Arora, Associate Professor, Department of Microbiology, Medical College, Rohtak - Member. The Committee after examining the eligibility criteria for admission to MBBS/BDS course in the State of Rajasthan, Delhi and Union Territory of Chandigarh, recommended vide its recommendations Annexure R-I that the eligibility criteria as contained in the prospectus for admission to MBBS/BDS course in the State of Rajasthan, if adopted, will eliminate the chances of admission of such persons who earlier were successful in getting themselves admitted on the basis of having procured a false domicile certificate. Thus, the Committee's suggestion was that a candidate must have studied for the last three years of the qualifying examination continuously as a regular candidate in a recognised institution(s). These recommendations were sent by the Director, Medical College, Rohtak, to the University with his recommendations. Later on, members of the medical faculty of this University also represented to the University to make a change in the

eligibility criteria to curb the practice of seeking admission by the residents of Delhi and other States on the basis of bogus domicile certificate procured by corrupt means at the cost of genuine Haryana students.

The Vice Chancellor considered the whole matter and referred the same to the admission committee which is competent authority of the University under the Ordinance to decide the same. Admission Committee considered the matter in its meeting held on 16.2.1994. The decision of the Committee is contained in Annexure R-3. This decision of the Committee was sent to the Commissioner and Secretary to Govt. of Haryana, Health and Medical Education Deptt., Haryana, Chandigarh, vide office letter dated 21.3.1993 for approval, Vide communication dated 29.4.1994, Commissioner and Secretary to Government Haryana, Health Department, wrote to the Registrar, Maharshi Dayanand University, Rohtak, conveying the Haryana Government's approval with regard to eligibility criteria to be adopted for entrance examination to be held in the year 1994. Justifying the criteria for admission to MBBS/BDS course, it has been stated that the same has been adopted keeping in view the criterion adopted by the State of Rajasthan, Delhi and Union Territory of Chandigarh. Otherwise too. the present criteria excludes the persons who managed to get admission on the basis of bogus domicile certificates. The eligibility criteria has a reasonable nexus with the object sought to be achieved. There is no arbitrariness in the criteria and so is not liable to be struck down for violating Article 14 of the Constitution. Justifying the issuance of corrigendum, it has been stated that the Chandigarh being capital of Haryana, students who had passed 10th, 10 + 1 and 10 + 2 examination as a regular candidate from a recognised institution(s) at Chandigarh, have also been made eligible on production of requisite documents and Haryana residence certificate and an affidavit sworn before the 1st Class Magistrate by the parent/guardian of the candidate to the effect that his son, daughter/ward has not appeared/is not appearing in the entrance test of any State, Union Territory other than those of Haryana. The amendment made in the eligibility criteria by this corrigendum is in the nature of relaxation to the students who have studied 10th, 10 + 1 and 10 + 2 class from the school(s)/institution(s) situate at Chandigarh. The eligibility conditions till the year 1993 and presently of 1994 have already been reproduced in the judgment written by my learned brother A.L. Bahri J. Thus, there is no need to reproduce the same. Broadly put, till the year 1993, a candidate besides possessing the requisite qualification had to give proof to the effect that he/she is a resident/domicile of Haryana supported by a certificate of Haryana domicile/residence issued by a competent authority. In the eligibility condition for the year 1994, the earlier eligibility condition of Haryana domicile/resident has been replaced with the following:-

"The candidates who have studied 10th, 10 + 1 and 10 + 2 classes as a regular candidates in recognised institutions in Haryana (such candidates will submit a certificate to this effect from the Principal of the institution/Head of the Deptt. last attended in the proforma given in appendix - "C.""

In addition thereto, the children/wards (if parents are not living)/dependents of the employees, appointed on regular basis of Haryana State Govt./members of All India Services borne on Haryana Cadre/statutory bodies/corporation established by or under an Act of the State of Haryana whether posted in Haryana or outside too have been made eligible. Similarly, such concession has been given to the children/wards of the employees of Indian Defence Services/Para military forces belonging to the State of Haryana at the time of entry into service as per their service record,

5. My learned brother A.L. Bahri, J. has examined the questions debated by the respective counsel by formulating the following questions:-

(i) Whether the provision made under Rule (1) for limiting admission to the students who had done 10, 10 +1 and 10 + 2 from the institutions situated in the State of Haryana is hit by Article 14 of the Constitution?

(ii) Whether the provision made in the corrigendum allowing the wards and children of the employees of the State of Haryana or Corporation who have done 10th, 10+1 and 10 + 2 classes from Chandigarh is hit by Article 14 of the Constitution of India?

(iii) Whether the corrigendum was required to be approved by the Executive Council of the University to become an Ordinance?

The question with regard to the eligibility criteria for admission to medical colleges has been the subject matter of consideration before the Supreme Court in a number of cases. In case reported as Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others, the apex Court had the occasion to examine the reservation of seats in a Medical College wherein it was contended by the appellants that they being more meritorious and domiciled in Delhi would have been admitted but for the reservation of seats which were filled by nomination by the Central Government. Since the persons lower in merit to the appellants had been admitted, the same was challenged in the High Court with the prayer that their nomination be struck down and the respondents be directed to admit the appellants and all other students who were eligible strictly in the order of merit. This writ petition was disposed of by the Division Bench of the High Court and the authority of the Central Government to select the candidates for the reserved seats was upheld. The Supreme Court too found no merit in the contention of the appellants and dismissed the appeal holding as under:-

"It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly

classified whether on territorial geographical or other reasonable basis it is not for the Courts to interfere with the manner and method of making the classification."

The matter regarding reservation of seats in Medical Colleges again came up for consideration before the apex Court in case reported as *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, and the Court was of the view that, no doubt, the primary imperative of Articles 14 and 15 of the Constitution of India is equal opportunity for all across the nation to attain excellence, yet reservation made with a view to correct an imbalance or handicap does not in any manner negate the essence of Articles 14 and 15 of the Constitution of India. Thus, the wholesale reservation is bad, but if the object is removal of regional or class inadequacy, the same cannot be denied. All the same, the reservation should not be excessive or societally injurious when measured by the overall competency of the end-product viz., decree-holders. Concluding the Court observed that, "where the human region from which the alumni of an institution are largely drawn is backward, either from the angle of opportunities for technical education or availability of medical services for the people, the provision of a high ratio of reservation hardly militates against the equality mandate viewed in the perspective of social justice."

6. The matter with regard to reservation of seats on the basis of domicile and institutional preference came up for consideration before the apex Court in case reported as *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, . Examining the question of admission on the basis of residence requirement, it was held that, the same does not violate the Article 16(2) of the Constitution of India. It was, however, held that the Constitution recognises only one domicile, namely, domicile in India, Examining the question with regard to the reservation made on the basis of residence requirement within the State and the institutional preference, testing the same on the anvil of Article 14 of the Constitution of India, it was held that the same cannot exceed 70% of the open general seats i.e. wholesale reservation on the ground of residence requirement as well as institutional preference, if made, is violative of Article 14 of the Constitution of India. As regards the remaining 30% of the seats, the same were to be filled up on the basis of merit on All India basis. The Court after observing that effort must always be made to select the best and most meritorious student for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country, yet held that departure to this can justifiably be made keeping in view the inequality in the society. It further held that to remove the existing inequality in the society, the State can resort to such action to make people who are factually unequal in their wealth, education or social environment, equal in specified areas. The scheme of admission to medical colleges may depart from the principle of selection based on merit, where it is necessary to do so for the purpose of bringing about real equality of opportunity between those who are unequals. Thus, a certain percentage of reservation on the basis of residence requirement can legitimately be made in order to equalise

opportunities for medical admission on a broader basis. Thus, in the context of the dispute, the Court opined that such a reservation should in no event exceed the outer limit of 70% of the total number of open seats after taking into account other kinds of reservations validly made.

7. The matter again came up for consideration in case reported as *Dr. Dinesh Kumar and Ors. v. Motilal Nehru Medical College, Allahabad and Ors.* AIR 1986 S.C. 1877. Reference was made to the earlier direction given by the Court for a meeting to be convened by the Ministry of Health, Government of India, and to prepare a detailed scheme for All India Entrance Examination for MBBS/BDS and Post-Graduate Courses. It is pursuant to this direction that a meeting was convened by the Ministry of Health and a scheme was submitted by the Medical Council of India and circulated amongst various State Governments and Deans of Medical Faculties and was considered at length and finally after modifying and redrafting the same was submitted by the Govt. of India to the Court for acceptance along with memorandum setting out the revised scheme. It is after considering the pros and cons of the scheme as well as the objections raised by the State and the other authorities, it was decided that admission to MBBS/BDS course in respect of 15% seats of the total seats (without taking into account any reservation validly made) will be on the basis of All India Entrance Examination, thereby the remaining seats to be filled up by the State/Colleges on the basis of residence/institutional preference including reservation to scheduled castes, scheduled tribes and other backward classes.

8. Challenge to this bunch of writ petitions is to the eligibility criteria now adopted by the respondents to fill up 85% seats. As noticed earlier, the primary contention of all the petitioners is that the eligibility criteria now adopted is discriminatory inasmuch as it excludes bona fide Haryana residents from its purview. Since the object of the amendment of the eligibility criteria was to stop the persons getting admission by filing fake/bogus domicile certificates, the present measure even excludes the bona fide residents of the State of Haryana. Elaborating the same, the counsel urged that the petitioners and their forefathers had been living in the State for the last more than 30 to 40 years but they are being deprived now to seek admission to these institutions merely for the reason that to acquire better education, their parents or guardians happen to send them to schools/institutions of repute outside the State of Haryana, for which they are being unjustly discriminated. In some individual cases, a ground of hardship was also highlighted. When a candidate has passed 10th, 10 +1 from a recognised institution situate within the State of Haryana but happen to pass 10 + 2 examination from a school or institution outside the State, he too is not entitled as per the present eligibility criteria. According to the counsel, the present eligibility criteria besides being discriminatory has no rationale to the object sought to be achieved and on this ground alone such a provision is liable to be struck down under Article 14 of the Constitution of India.

9. Counsel for the respondents, on the other hand, tried to justify the eligibility

criteria adopted by the University for the year 1994. Explaining, the counsel urged that the intention of the University authorities is quite explicit i.e. to eliminate the chances of persons getting admission by filing fake/bogus domicile/residence certificate. This is with a view to check the entry of these intruders in the State quota that the earlier eligibility criteria has been modified. While doing so, the criteria adopted by the State of Rajasthan, Delhi and Union Territory of Chandigarh were duly kept in view. In fact, a perusal of the prospectus of the aforementioned States and Union Territory brings out clearly that elsewhere too some criteria is adopted so as to protect the candidates who have studied in the institutions within the State or Union Territory as the case may be. We took this measure to protect the students who had studied in these institutions within the State. Further justifying the present criteria viz-a-viz preference on the ground of residence/domicile, reliance was placed upon the observations of the apex Court in Dr. Pardeep Jain's case (supra) wherein the Court held that the Constitution recognises only one domicile in India, namely, domicile in India. According to the counsel, the criteria adopted in no way infringes Article 14 of the Constitution of India. Even otherwise, the classification made is founded on intelligible differentia which has a rational relation to the object to be achieved. As regards the question of hardship highlighted by the counsel for the petitioners on peculiar facts of the case, it was stated by the counsel for the respondents that the matter can be examined by the authorities on compassionate grounds, if so directed by the Court. However, it does not clothe the petitioners with any such right nor the criteria can be held to be violative on this ground.

10. Without examination the peculiar facts of an individual case, it would be appropriate to test the eligibility criteria now adopted on the anvil of Article 14 of the Constitution of India. Reasons which impelled the authorities to change the earlier criteria have been duly noticed and so need not be stated again. All that it has to be seen is whether the same is based on intelligible differentia and has rationale nexus to the object to be achieved. Examined so, it can be said that by taking recourse to the present eligibility criteria chances of persons getting admission on the basis of fake/bogus domicile certificate stands totally eliminated. So from this angle, it certainly satisfies the test as contemplated by the judicial pronouncements of the apex Court.

11. The next point which needs examination is whether the grievance can be made on the ground that persons who were earlier entitled have now been excluded. This objection pertains to the persons claiming themselves to be bona fide residents of Haryana. As noticed in the earlier part of the judgment, this consideration has purposely been excluded and that too for a valid reason as it had no rationale nexus to the object sought to be achieved. Presently, the emphasis is to prefer the candidates who had their education in school or colleges irrespective of the fact whether such school or college is affiliated to a University or a Board within the State or outside the State. Closely examined, this criteria encompasses such bona fide residents of Haryana who had their education for three consecutive years in class 10th, 10 + 1 and 10 + 2 from a

recognised school or institution within the State of Haryana. This way, it cannot be said that the same is discriminatory.

12. As regards the cases where the candidate had education for one year or two years for the relevant period within the State but have been denied admission on account of non-compliance of eligibility criteria in full, the same cannot also be termed to be discriminatory nor the same can be construed as a ground to hold the eligibility criteria to be invalid. At best, these cases can be termed as hard which, of course, require legitimate consideration from the authorities.

13. The second ground of attack on the present eligibility criteria is that the same amounts to 100% reservation on the basis of institutional preference and so is liable to be struck down. There appears to be some fallacy in the submissions made by the learned counsel for the petitioners. The apex Court having earlier determined the admission to MBBS/BDS course in Dr. Pardeep Jain's case (supra) putting the ratio at 30% seats on the basis of All India Entrance Test and the remaining 70% seats to be filled by the State/Union Territory, modified the same in its subsequent judgment in Dr. Dinesh Kumar's case (supra). This latter judgment clearly settles the controversy. As noticed earlier too, 15% seats, without taking into account any reservation, is to be filled up on the basis of All India Entrance Examination, thus leaving 85% seats to the States/Union Territories. While filling up the remaining 85% seats reservations have to be made with regard to the scheduled castes, scheduled tribes and other backward classes and it is thereafter that the remaining seats can be filled on the basis of residence/institutional preferences. The decision in case reported as State of Maharashtra Vs. Minoo Noazer Kavarana and Others, , does not in any manner help the case of the petitioner, wherein there was controversy between the parties with regard to filling up 15% of seats under the All India quota. It is with regard to the remaining seats that the Government of Maharashtra laid down a policy of reservation thereby dividing the remaining seats in the ratio of 70% and 30% i.e. 70% seats for local students in the city of Bombay and 30% seats for the students outside Bombay but within the State of Maharashtra. Thus, no impediment was placed upon the right of the particular State with regard to seats which had fallen to its share. In case the submission of the learned counsel for the petitioners is taken to its logical conclusion, it would mean that after excluding the seats to be left for scheduled castes, scheduled tribes and other backward classes, as per their legal entitlement, the remaining seats again have to be divided on the basis of institutional preferences/ residence preferences and merit. Such conclusion is not borne out on the reading of the decisions of the apex Court and otherwise too does not appeal to reason.

14. To be fair to the counsel, reference to decisions in cases reported as Archana Vs. The Government Medical College, Nagpur and Others, and Meenakshi Malik v. University of Delhi and Ors." 1989(2) R.S.J. 611 would be appropriate. Both these cases have been decided in view of their peculiar facts. In Kumari Archana's case (supra), it was found that she was domicile in the State of

Maharashtra. She was a permanent resident of Maharashtra and was also born there. Her father was a defence personnel. In view of the exigency of service, her father remained posted outside the State. The authorities declined her admission as she had not passed the qualifying examination of 12th standard from an institution located in the State of Maharashtra. The Court while construing the above provision held that admission could not be denied to a meritorious son/daughter of a serviceman who is domicile of Maharashtra State who in view of the nature of job had to serve the country having been posted outside the State of Maharashtra. In these circumstances, it was held that this classification has no nexus to the object sought to be achieved. In these circumstances, her petition was allowed and a direction was given to create a supernumerary seat if need be to accommodate her.

15. Similarly, in Meenakshi Malik's case (supra) the apex Court on the facts of the case held that the clause stipulating that a person must have received last two years of education in a school in Delhi to be unreasonable, especially when the father had to leave India having been posted by the Government to a foreign country. In these circumstances, the condition was held to be unreasonable and the petitioner was directed to be admitted to one of the Medical Colleges. Counsel for the petitioners relied upon the Division Bench judgment in case reported as Heramba Kumar Sarma and Vs. State of Assam and Others, where a similar clause as in the present case was held not to be valid in the context of the case. A bare perusal of the conditions for admission and eligibility for appearance in the admission test were as follows:-

"(a) He/She must be a citizen of India.

(b) His/Her parents must be permanent residents of the State of Assam as per the criteria adopted for the purpose from time to time and he/she shall have to furnish a certificate to that effect along with the application.

(ii) His/her parents must have been residing continuously in the State of Assam for at least 20 (twenty) years preceding the last date fixed for the submission of the application.

(iii) He/She must have studied for a period of 3 years in an Institution within the State of Assam preceding the last date fixed for submission of the application."

As is clear from reading the aforesaid eligibility criteria, the candidate's parent must be permanent resident of State of Assam. In addition thereto, parent must have been resident in the State of Assam for the last twenty years preceding the last date fixed for submission of the application form. It is in addition to the aforesaid permanent residence/domicile requirement that a further condition was imposed that he or she must have studied for a period of three years in an institution within the State of Assam. Since no explanation was furnished as to why this clause was inserted, the Court directed to amend this sub-clause or delete it. In the present case, the respondents have assigned cogent reasons for inserting such like clause in its eligibility criteria and as held earlier the same has

rational basis to the object sought to be achieved i.e. to exclude the persons getting admission on the basis of bogus/false domicile certificates and secondly to debar persons from claiming preferential treatment (i) on account of permanent residence/domicile and (ii) on account of institutional preference from two different sources. Thus, I express my inability to follow the decision of the Gauhati High Court in Heramba Kumar Samra's case (supra) in view of the facts of the present case.

16. However, keeping in view the ratio of decisions in Kumari Archana's case (supra) and Ms. Meenakshi Malik's case (supra) in respect of hard cases out of the present petitions like the few noticed earlier need to be examined on compassionate ground i.e. in a case where candidate has passed 10th 10+ 1 from a recognised institution) in Haryana, but for one or the other reason had to complete his/her 10 + 2 examination from an institution situate outside the State or such like other cases. It would be appropriate to direct the respondents to examine such cases on compassionate ground and permit such candidates, if so found to be entitled, to compete with others thereby waiving the eligibility criteria. Such like cases are in the nature of exception. A provision otherwise valid when tested on the mandate of Article 14 of the Constitution cannot be declared to be invalid on this ground. Thus, I am of the view that the criteria now adopted satisfies the test of reasonableness in terms of Article 14 of the Constitution of India.

17. Vide corrigendum Annexure P-2, children of employees of the State who are living at Panchkula but posted at Chandigarh, who had passed their 10th, 10 + 2 examination from Chandigarh too have been made eligible. This has been assailed by the petitioners whose fathers/guardians whether stationed at Panchkula or elsewhere in the State, but their children happen to have completed their education upto 10 + 2 level from the school/institution(s) at Chandigarh being violative of Article 14 of the Constitution. The attack by the petitioner to the corrigendum is that it irrationally differentiate and creates two classes of persons though identically placed and the same infringes Article 14 of the Constitution. To me, the corrigendum issued by the respondents appears to dilute to some extent the real purport of the present eligibility criteria and thus was unnecessary. Since the primary purpose appears to be to prefer the candidates from the institutions situate within the State of Haryana, extension/exemption as given by the corrigendum is, in fact, wholly uncalled for. Viewed in the context of the eligibility criteria adopted by the Union Territory of Chandigarh, Delhi or for that matter by the State of Rajasthan, students having completed their study at one or the other places are, in fact, equally situate i.e. to say students at Chandigarh, irrespective of the fact whether they belong to Haryana, Punjab or any other State, in fact, are entitled to preferential treatment which also is in the nature of institutional preference. Similar is the case at Delhi as well as at Rajasthan. Thus, the candidates at these places even if they belong to Haryana do not suffer on this account in any manner i.e. such candidate besides being entitled to complete in the All India Entrance Examination are

entitled to a preferential treatment having studied in a recognised institution within the Union Territory or the State, as the case may be. The authorities agreed to include the sons/wards of bona fide residents of Haryana presently employed at its capital Chandigarh within the eligibility criteria provided they furnish proof of their domicile/residence with a further undertaking that they have not availed any other preferential right (i.e. are/have appeared by availing any other institutional preference). Viewed so, corrigendum is quite in the nature of concession, otherwise too is not violate of Article 14 of the Constitution.

18. As regards question No. (iii), I agree with the reasoning and conclusion of my learned brother A. L. Bahri, J.

19. For the aforesaid reasons, I dismiss these writ petitions with a direction to the respondents to sympathetically consider the cases of such petitioners who for unavoidable reasons were not able to fully comply with the condition of clearing all the three examinations i.e. 10th, 10+1 and 10 + 2 examination from a recognised institution situate within the State of Haryana. No order as to costs.

A.L. Bahri, J.

20. Vide this judgment fifty-five writ petitions (CWP Nos. 6766, 7001, 7036, 7231, 7276, 7441, 7445, 7466, 7467, 7764, 7891, 7938, 7947, 8002, 8004, 8087s 8095, 8104, 8108, 8110, 8111, 8112, 8113, 8118, 8120, 8121, 8123, 8146, 8150, 8152, 8167, 8168, 8174, 81%, 8240, 8248, 8262, 8271, 8285, 8324, 8340, 8341, 8468, 8563, 8606, 8611, 8678, 8679, 8680, 8686, 8704, 8751, 8722, 8783 and 8900 of 1994) are being disposed of as one of the questions involved therein is common. In some of the writ petitions written statements have been filed. It is not considered necessary to await the written statements filed would serve the purpose. Main judgments is prepared in C.W.P. No. 7001 of 1994.

21. In this case the petitioner Meenal Sharma is a resident of Panchkula. She is 17 years of age and passed Matriculation examination from Bhartiya Vidyalaya, Sector 27, Chandigarh. She has appeared in 10 + 2 examination from CBSE. Her parents who are doctors and running a Nursing Home at Panchkula.

Thus, they are the domiciles of Haryana. So is the petitioner. For getting best education, she joined the aforesaid school in Chandigarh which is capital of the State of Haryana.

22. Every year entrance examination was held by the State of Haryana for selecting candidates for admission to MBBS and BDS Courses. Till 1993; the eligibility conditions provided were as under:-

"(1) He/she is a resident/domicile of Haryana as defined in the Haryana Government Letter No. 62/29/64-5 CSI dated 10.9.91 (Appexdix-A).

Note:- The Certificate of Haryana Domicile/residence issued prior to three months from the last date of receipt of application will not be accepted. This

condition will not apply to the nominees of the Government of India and Tripura Government.

(II) he/she produces a good moral character certificate duly attested by the Principal of the College/School last attended.

(III) he/she will attain the age of 17 years or more on December 31st of the year of admission and has been passed one of following examinations. Age shall be determined as per entry in the Matriculation or +2 examination certificate. The Vice-Chancellor will be final authority for deciding whether or not any other Certificate should be deemed as equivalent;

(i) Senior Secondary Examination (12th Class of the Board of School Education, Haryana) or an examination recognised as equivalent thereto by M.D. University with at least 33% marks in each subject i.e. English, Physics, Chemistry and Biology (Botany and Zoology) in the theory and practical separately and 50% marks in aggregate of these subjects.

(ii) B.Sc. Final Examination of M.D. University, Rohtak or of any other University recognised as equivalent by M.D. University, Rohtak or B.V.Sc. (Nursing) Final examination of any University recognised by M.D.U. with at least 50% in aggregate.

(iii) M.Sc. Exam, of the M.D. University, Rohtak or of any other University recognised as equivalent by M.D. University, Rohtak, with at least 50% marks:

Provided that students with the qualification in (ii) and (iii) above must have passed in Physics, Chemistry, Biology (Botany and Zoology) and English at the Senior Secondary Certificate (12th Class) or equivalent or higher level." In 1994 the eligibility conditions were changed which are as under:-

"A. Only the candidates of the following categories will be eligible to appear in the MBBS/BDS entrance examination: -

(i) The candidates who have studied 10th, 10+1 and 10+2 classes as regular candidates in recognised institutions in Haryana (Such candidates will submit a certificate to this effect from the Principal of the institution/Head of the Department last attended in the proforma given in appendix-"C").

(ii) The children/wards (if parents are not living)/dependent of the employees, appointed on regular basis, of Haryana State Govt. members of all India Services borne on Haryana cadre/Statutory Bodies/Corporations established by or under an Act of the State of Haryana whether posted in Haryana or outside (such candidates should submit a certificate to the effect from the employer in Appendix "D").

(iii) The children/wards (if parents are not living)/dependent of the employees of India. Defence Services/Para military forces belonging to Haryana State at the time of entry into service as per their service record (such candidates will submit a certificate in the proforma given in Appendix "E" from the Commanding Officer/

competent Authority).

B. The candidate belonging to one of the categories mentioned above should fulfil the following conditions to appear in the entrance examination:-

(i) He/she will attain the age of 17 years or more on December 31st, 1994.
Note:- The age shall be determined as per entry in the Matriculation/Higher Secondary (or its equivalent certificate.)

(ii) The candidate must have passed one of the following examinations:-

(a) Senior Secondary Examination (12th Class) of the Board of School Education, Haryana, or an examination recognised as equivalent thereto by M.D. University with at least 33% marks in each subject i.e. English, Physics, Chemistry and Biology (Botany and Zoology) in the theory and practical separately and 50% marks in aggregate of these subjects.

(b) B.Sc. final examination of M.D. University, Rohtak or of any other University recognised as equivalent by M.D. University, Rohtak or B.V.Sc. or B.Sc. (Nursing) final examination of any University recognised by M.D. University with at least 50% marks in aggregate.

(c) M.Sc. Exam, of the M.D. University, Rohtak or of any other University recognised as equivalent by M.D. University, Rohtak, with at least 50% marks.

Provided that students with the qualification in (b) or (c) above must have passed in physics, chemistry, Biology (Botany and Zoology) and English at the senior Secondary Certificate (12th Class) or equivalent or higher level."

23. With the change in the eligibility conditions as aforesaid, the petitioner would be debarred from taking the entrance examination. Thus, in this writ petition the challenge is to the change in the eligibility condition as aforesaid. During the pendency of the petition a corrigendum was issued by the State of Haryana allowing wards of the employees belonging to Haryana who had studied 10, 10 + 1 and 10 + 2 Classes as regular candidates in recognised institutions in Chandigarh subject to the fulfilment of other eligibility conditions and further providing that they should submit certificate of Haryana Residence/Domicile as per State Government Rules along with an affidavit by the parent/guardian that the candidate had not appeared/is not appearing in the entrance test of any State/U.T. other than those of Haryana and such instructions for which entrance tests were conducted on all India basis for purposes of admission to MBBS and BDS Courses. Challenge in these petitions is also to the new conditions laid down as above.

24. Annexure P.1 is a letter from the State Government providing categories for eligibility to appear in the MBBS and BDS entrance examination, details of which have already been reproduced above. Annexure P.2 is the corrigendum referred to above. Annexure P.3 and P.4 are the proformas which were required to be submitted under the corrigendum-Annexure P.2.

25. Written statement has been filed on behalf of the M.D. University. Primary submissions have been made that no statutory rights of the petitioner have been infringed and the writ petition is incompetent. Reference has been made to be memorandums issued by several Associations to the Health Ministry of Haryana for effecting change in the criterion to be adopted for admission to MBBS and BDS Courses. Primarily two points were raised in the writ petition, firstly that the domicile condition be restricted to the candidates who studied for the last 3 years of the qualifying examination as a regular candidate in the recognised institutions in Haryana on the pattern of neighbouring States such as Rajasthan and secondly to scrap the reservation for socially, economically, educationally weaker sections of the Society other than Scheduled Castes, Scheduled Tribes and backward classes. A three-member committee was constituted by the Director of the Medical College, Rohtak. The committee recommended the criterion for effecting change as per Rajasthan pattern. Annexure R.1 contains the recommendations of the Committee made on December 7, 1993. The Committee forwarded the recommendations to the University. Vide letter Annexure R.2 the Medical Faculty also represented to the University to make the changes to curb the practice of seeking admission by the residents of Delhi and other States on the basis of bogus domicile service procured by corrupt means which was at the cost of genuine Haryana students. The past experience of the University as well as the Medical College, Rohtak was for arranging for issuing such domicile certificates on account of litigation. The Vice-Chancellor thus considered the whole matter and referred the matter to the Admission Committee. A meeting of the Admission Committee was held on February 16, 1994 and decision is contained in Annexure R.3. This decision was sent to the Government for approval. The Government conveyed the decision on April 29, 1994 vide letter Annexure R.5. Thus the eligibility criterion for admission to MBBS and BDS examination was framed. Annexure R. 6, copy of the prospectus from Rajasthan was produced. Other assertions of the writ petitioner were denied. Copies of the Delhi prospectus and Chandigarh prospectus Annexure R.6 were also produced. A rejoinder was filed on behalf of the petitioner reiterating the stand as taken up in the writ petition.

26. In C.W.P. No. 7001 of 1994 the petitioner Meenal Sharma is a resident of Panchkula and studied at Chandigarh. In C.W.P. No. 8340 of 1994, the petitioner Bharat B. Dua is a resident of Hodal. Petitioner's father is a doctor. The petitioner did 10th, 11 th and 12th from Himachal Pradesh. In C.W.P. No. 7445 of 1994, the petitioner Ms. Meetu Chhabra is resident of Panchkula and petitioner No. 2 Mr. Ashish Sharma is resident of Kirtinagar, Sirsa. Petitioner No. 1 studied at Chandigarh. Petitioner No. 2 also studied at Chandigarh. In C.W.P. No. 6766 of 1994 the petitioner Gaurav Bansal is a resident of Sonapat and studied upto 10th at Sonapat and finally did 10+ 1 and 10 + 2 at Delhi. In C.W.P. No. 8112 of 1994, the petitioner Miss Shaveta Arora is a resident of Chandigarh and did 10th and 10+1 from Haryana and 10 + 2 from Chandigarh. In C.W.P. No. 8113 of 1994 the petitioner Miss Anchal Gupta did 10th, 10 + 1 and 10 + 2 from

Chandigarh. Her father is a domicile of Haryana employed in a Bank at Shahabad. In C.W.P. No. 7938 of 1994 the petitioner, Sahib Sangwan is a resident of Yamuna Nagar. He did X and XII classes from Mussoorie. In C.W.P. No. 8(X)4 of 1994, the petitioner Miss Suchita Verma's father is a resident of village Saidpur District Yamuna Nagar. The petitioner studied 10th, 11th and 12th at Chandigarh. In C.W.P. No. 7891 of 1994, the petitioner Vikas Garg is resident of Sirsa and studied upto 9th at Sirsa and did 10th, 10 + 1 and 10 + 2 from Pilani (Rajasthan). In C.W.P. No. 8095 of 1994, the petitioner, Shalini Jain studied in Haryana upto 8th class and did 9th, 10+1 and 10 + 2 from New Delhi. C.W.P. No. 9309 of 1994 has been filed by Haryana Students "Welfare Society as public interest litigation.

27. Three broad questions have been debated by counsel for the parties which may briefly be formulated as under:-

(1) Whether the provision made in Rule (i) for limiting admission to the students who had done 10th, 10+1 and 10 + 2 from the institutions situated in the State of Haryana is hit by Article 14 of the Constitution in as far as it debars students who fulfil the main criterion provided for admission to the MBBS/BDS Course i.e. who are aged 17 years and more and have passed 10 + 2 examination from the institutions situated in Haryana or any other States?

(2) Whether provision made in the corrigendum allowing wards and children of the employees of the State of Haryana or Corporations who have done 10 + 2 from Chandigarh is hit by Article 14 of the Constitution.

(3) Whether the corrigendum Annexure. P.2 was required to be approved by the executive council of the University to become an ordinance.

There are several decisions of the Supreme Court as well as other High Courts on the question of admission to the institutions keeping in view the residential preference and institutional preference. A brief reference thereto is necessary to appreciate and decide the question involved in these case.

28. Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, has been relied upon by the parties. Learned counsel for the respondents vehemently argued that the State is fully competent to provide criterion for admission to MBBS and BDS courses in the colleges run by the State in Haryana and limiting the admission to the candidates who are bona fide and genuine residents of Haryana. A period of 3 years" stay in Haryana by such students who have passed 10th, 10 + 1 and 10 + 2 from the institutions situated in the State of Haryana would not entitle them to seek admission. As far as post-graduate courses, such as MS and MD and alike are concerned, the Supreme Court in the above noted case held that it would be imminently desirable not to provide for reservation based on residence requirement within the State or on institutional preference. While commenting upon the scope of Article 14 of the Constitution vis-a-vis providing medical education to the citizens, it was observed in para 10 of the judgment as under:-

"The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunities to all citizens in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set up. Moreover, it would be against national interest to admit in medical colleges or other institutions giving instructions in specialities, less meritorious students when more meritorious students are available simply because the former are permanent residents or residents for a certain number of years in the State while the latter are not, though both categories are citizens of India. Exclusion of more meritorious students on the ground that they are not residents within the State would be likely to promote sub-standard candidates and bring about fall in medical competence, injurious in the long run to the very region." In para 13 it was observed as under: -

"We may now proceed to consider what are the circumstances in which departure may justifiably be made from the principle of selection based on merit. Obviously, such departure can be justified only on equality-oriented grounds, for whatever be the principle of selection following for making admissions to medical colleges, it must satisfy the test of equality." In para 18 it was observed as under:-

"If the State in such a case seeks to remove the absence of the opportunity for medical education and to provide competent and adequate medical services in such backward region by starting a medical college in the heart of such backward region and reserved a high percentage of seats there to students from that region, it may not be possible to castigate such reservation or preferential treatment as discriminatory."

In para 20 of the judgment reference was made to the earlier decision of the Supreme Court in *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, and it was observed as under:-

"We agree wholly with these observations made by the learned Judge and we unreservedly condemn wholesale reservation made by some of the State Governments on the basis of "domicile" or residence requirement within the State or on the basis of institutional preference for students who have passed the qualifying examinations held by the University or the State excluding all students not satisfying this requirement, regardless of merit. We declare such " wholesale reservation to be unconstitutional and void as being in violation of Article 14 of the Constitution."

In para 22 it was observed as under:-

"So much for admission to the MBBS course, but different considerations must prevail when we come to consider the question of reservation based on residence requirement within the State or on institutional preference for admission to the post graduate courses, such as, MD, MS and the like. There we cannot allow excellence to be compromised by any other considerations because that would be

detrimental to the interest of the nation. It was rightly pointed out by Krishna Iyer, J. in Dr. Jagadish Saran and Others Vs. Union of India (UOI), Paras 23, 39 and 44 and we wholly endorse what he has said."

With respect to reservation in MBBS and BDS Courses opinion was expressed in para 21 of the judgment as under:

"But, in our opinion, such reservation should in no event exceed the outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservation validly made. The Medical Education Review Committee has suggested that the outer limit should not exceed 75 per cent but we are of the view that it would be fair and just to fix the outer limit as 70%. We are laying down this outer limit of reservation in an attempt to reconcile the apparently conflicting claims of equality and excellence. We may make it clear that this outer limit fixed by us will be subject to any reduction or attention which may be made by the Indian Medical Council which is the statutory body of medical practitioners whose functional obligations include setting standards for medical education and providing for its regulation and co-ordination. We are of the opinion that this outer limit fixed by us must gradually over the years be progressively reduced that is a task which would have to be performed by the Indian Medical Council. We would direct the Indian Medical Council to consider within a period of nine months from today whether the outer limit of 70 per cent fixed by us needs to-be reduced and if the Indian Medical Council determines a shorter outer limit, it will be binding on the State and the Union Territory."

29. The position as it now emerges is that 15% seats in all Medical Colleges in India are filled by open entrance test whereas 85% seats in colleges in the States are filled by the criterion provided by the State. Thus, we are concerned with the criterion provided by the State of Haryana with respect to the filling of 85% seats in the MBBS and BDS courses in the Medical Colleges in the State of Haryana.

30. In R. Chitrlekha and Another Vs. State of Mysore and Others, in para 14 of the judgment the Supreme Court held as under: -

"The State Government has power to prescribe a machinery and also the criteria for admission of qualified students to Medical and engineering colleges run by the Government and with the consent of the management of the Government aided colleges, to the said colleges said."

31. At this stage reference may also be made to another decision of the Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , holding that upto 14 years of age it is the duty of the State to provide education to the citizens and after 14 years to make provision for education as per resources available with the State. Preference has been made during arguments to a number of cases which relate to admission to Post-graduate studies vis-a-vis the applicability of Article 14 of the Constitution. The ratio of such decisions cannot be applied to the case in hand. They may thus be noticed.

32. Dr. Vijaya Ragtiava Rao, B.N. v. Union of India and Ors. 1994(1) S.L.R. 593 was a case of admission in the super-speciality course of Cardiology, which is done after clearing MBBS Course. Claim was with respect to a seat reserved for local candidate. Provision made for preference on the basis of local candidate was held to be neither arbitrary nor violative of principles of natural justice. In State of Rajasthan and Another Vs. Dr. Ashok Kumar Gupta and Others, the question related to admission to a Post-Graduate Course. Admission granted while allowing weightage on the ground of college based preference was held to be violative of Article 14 of the Constitution. Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others, , is a case relating to admission to Post Graduate Course in Medical College. Preference on the basis of passing qualifying examination from Municipal Colleges was held to be offending Article 14 of the Constitution.

33. In Dr. S. Balaji Pai v. State of Karnataka and Ors., again the question related to admission to Post-Graduate Course and the provision vide which the graduates from Universities outside the State were excluded was held to be violative of the provisions of Article 14 of the Constitution.

34. The aforesaid cases which relate to admission to Post Graduate Courses are not helpful in deciding the case in hand. It is taken that in such like cases admission has to be open and there could not be any question of preference on the basis of residence or college-wise. Counsel for the parties have relied upon several decisions directly relating to admission to MBBS/BDS Courses which need discussion. In Mhawla Abdulaziz Gulamhusein and Anr. v. Dean, Goa Medical College, having his office at Panaji Goa and other AIR 1974 Goa 26 the question related to admission to a Medical College. The prospectus imposed a bar on the admission to the college of students who had not passed the Inter Science Examination from colleges within the territory of Goa, Daman and Diu. The aforesaid provision was held to be Ultra vires of the Constitution. The decision was based on its own facts, as observed in para 18 of the judgment as under:-

"In the present case as rightly argued by Shri Kakodkar the impugned part of the rule establishes a classification based on attendance or keeping of terms for the one year course of Inter Science in colleges of the territory. The classification therefore is made for catering not to the needs of the people of a certain region, but, if at all, for the colleges of that region. The colleges in this territory do not hold any test or examination of their own for admission to the Medical College or for other professional courses of the universities to which they are affiliated. Besides a classification made on the basis of mere attendance to the Inter Science course irrespective of any test or examination, would have no nexus with the object to be achieved, namely, the selection of the best talent."

The aforesaid decision is, therefore, not helpful in deciding the present case. Preference is not being given to a student passing 10+2 from any particular school or college in the State of Haryana. Rules of admission to MBBS Course framed by Maharashtra State were the subject matter of consideration in

Nidamarti Maheshkumar Vs. State of Maharashtra and Others, . The qualification required for admission to the MBBS Course was passing of 12th standard examination held by the Maharashtra State, Board of Secondary and Higher Secondary Education. Students who had passed such examination from schools/ colleges situated within the jurisdiction of one University were not eligible for admission to the Medical College or College situated in the jurisdiction of another University. Such a rule was amended in 1984 and earlier all the students in the State of Maharashtra passing HCS i.e. 10 + 2 examination were entitled to seek admission. The case of Dr. Pradeep Jain and other cases of the Supreme Court were referred to. It was argued that region-wise preference was given because such regions were backward. It was held that region-wise classification for admission to Medical Colleges cannot be sustained. It was observed as under:-

"There is no reason why a brilliant student from a region which is within the jurisdiction of a university in Vidarbha or Marathwada area should be denied the opportunity of medical education in Bombay or Pune. Why should he remain confined to the so-called backward region from which he comes? Should an equal opportunity for medical education not be made available to him as is available to students from regions within the jurisdiction of Bombay and Pune Universities? Why should mobility for educational advancement be impeded by geographical limitations within the State? Would this clearly not be a denial of equal opportunity violative of Article 14 of the Constitution? The answer must clearly be in the affirmative. It would plainly be violative of the mandate of the equality clause to compartmentalise the State into different regions and provide that a student from one region should not be allowed to migrate to another region for medical education and thus be denied equal opportunity with others in the State for medical education. This is precisely the reason why this Court struck down unitwise scheme for admission to medical colleges in the State of Tamil Nadu in A. Peeriakaruppan's case."

In para 7 it was clarified that:-

"It would not be unconstitutional for the State Government to provide for reservation or preference in respect of a certain percentage of seats in the medical college or colleges in each region in favour of those who have studied in schools or colleges within that region and even if the percentage stipulated by the State Government is on the higher side, it would not fall foul of the constitutional mandate of equality."

Reasons were also provided for holding as above in para 7 which need not be noticed. While adopting the ratio of the decision in Dr. Pradeep Jain's case, it was laid down as under: -

"We would adopt the same principle in case of region-wise reservation or preference and hold, that not more than 70 per cent of the total number of open seats in the medical college or colleges situate within the are of jurisdiction of a particular university, after taking into account other kinds of reservations validly

made, shall be reserved for students who have studied in schools or colleges situate within that region and at least 30 per cent of the open seats shall be available for admission to students who have studied in schools or colleges in other regions within the State."

It was clarified in para 8 that 70 per cent and 30 per cent seats referred to mean the total number of open seats after deducting such number of open seats as are required to be available for admission of students on all India basis. The ratio of aforesaid decision was followed by the Supreme Court in *State of Maharashtra Vs. Minoo Noazer Kavarana and Others*, . Subsequently schemes were prepared for holding all India test with regard to admission and approved by the Supreme Court in the decision in *Dr. Dinesh Kumar and Ors. v. Motilal Nehru Medical College, Allahabad and Ors.* AIR 1986 S.C. 1877. For the purposes of deciding the case in hand it is not considered necessary to refer to such schemes and the modalities adopted by the Supreme Court. The question as already noticed above relates to admission to the MBBS Course with regard to 85% seats to be filled by the State. The matter came up before Nagpur Bench of the Bombay High Court in *Archana Vs. The Government Medical College, Nagpur and Others*, . The Medical College of the Government of Maharashtra Rules provided eligibility criterion for admission to MBBS Course to such of the candidates who had passed necessary examination from institutions located in Maharashtra State. Father of the petitioner Kumari Archana was a defence personnel and domicile of Maharashtra but she did not pass the qualifying examination from an institution located in Maharashtra. Thus, he approached the Court for seeking admission. It was held in para 3 of the judgment as under-

"Such a Rule will not only be arbitrary and unreasonable but will permit discrimination between two classes of servicemen of Maharashtra domicile actually posted at material time (i) in Maharashtra and (ii) outside Maharashtra. This classification will be clearly invidious having no nexus whatsoever to the object sought to be achieved. Supreme Court has repeatedly held against denial of admission only on the basis of residence and/or region. Canons of interpretation mandates that interpretation which leads to unconstitutionality has to be avoided, and harmonious construction to be preferred, if possible."

35. Earlier similar question was left open in *Kumari Suneeta Ramchandra Koyalamudy Vs. State of Maharashtra and Another*, . Such a question also came up for consideration before the Supreme Court in *Meenakshi Malik v. University of Delhi and other*, 1989(2) RSJ 611. The qualifying condition was that a candidate appearing for entrance test to the Medical College in Delhi should have received last two years of education in a school in Delhi. This condition was challenged. In para 4 of the judgment, the Supreme Court while holding that denial of admission to the petitioner was unreasonable, observed as under:

"It seems to us that the qualifying condition that a candidate appearing for the Entrance Examination for admission to a Medical College in Delhi should have, received the last two years of education in a school in Delhi is unreasonable

when applied in the case of those candidates who were compelled to leave India for a foreign country by reason of the posting of the parent by the Government to such foreign country. There is no real choice in the matter for such a student, and in many cases the circumstances of the student do not permit her to continue schooling in India. It is of course theoretically possible for a student to be put into a hostel to continue her schooling in Delhi. But in many cases this may not be feasible and the student must accompany a parent to the foreign country. It appears to us that the rigour of the condition prescribing that the last two years of education should be received in a school in Delhi should be relaxed, and there should be no insistence on the fulfilment of that condition, in the case of students of parents who are therefore required to leave India along with them. Rules are intended to be reasonable, and should take into account the variety of circumstances in which those whom the rules seek to govern find themselves. We are of opinion that the condition in the prescription of qualifications for admission to a medical college in Delhi should be construed as not applicable to students who have to leave India with their parents on the parent being posted to a foreign country by the Government."

In *Heramba Kumar Sarma and Vs. State of Assam and Others*, almost similar was the position. The eligibility condition provided that the candidate must have studied for preceding three years in the State i.e. he have had 10 + 2 in school or college in the State of Assam. Such a condition was held to be discriminatory having no rational basis. It was held that the State Government as a policy could fill up 85 per cent of the seats in the manner it liked.

37. In *Ekta Arvindkumar Shah (Minor) and Another Vs. H.S. Shah and Another*, the question related to the admission to the Medical College and the Rules restricted admission to local students. The college was managed by the Municipal Corporation. Such a Rule was held to be violative of Article 14 of the Constitution, after referring to several decisions already referred to above. Reference was also made to the decision of the Supreme Court in *Deepak Sibal Vs. Punjab University and Another*, wherein it was held that there should not be any discrimination between the children of the employees i.e. employees of the State or employees of the private parties. In para 10 of the judgment in *Kum. Ekta Arvind Kumar Shah's* case the Gujarat High Court observed as under:-

"It becomes evident that it may be open to be "State" to identify the source of admission, and thereby restrict admission to certain well defined categories. But this could be done only in conformity with the provisions of the Constitution. Simply because State Government or any other instrumentality of the "State" incurs expenditure for running the College, it is not relieved of its constitutional obligations. By financing for the expenditure of running the college, the State cannot encroach upon the fundamental rights of the citizens."

38. Although the question was not directly involved, reference may be made to Full Bench decision of this Court in *Amardeep Singh Sahota Vs. The State of Punjab etc.*, wherein discrimination was being made in the same set of students

on the criterion of sports. After the applications were invited for admission, the criterion were changed and it was held that the same could not be done.

39. After the perusal of the judgments referred to above, it is crystal clear that there has to be 15% admission in all the colleges in the State excepting the States of Andhra Pradesh and J. & K. on the basis of all India entrance test. With regard to the remaining 85% the admission has to be regulated by the States wherein such medical colleges are situated, keeping, in view the reservation policies i.e. with regard to Scheduled Castes, Backward Classes, Ex-Servicemen etc. Even, for admission to 85% seats as above, there has to be admission by open competition i.e. taking 85% as a unit 30% thereof has to be by open competition from residents of Haryana passing 10 + 2 examination and the remaining by way of reservation preference. The State would be within its rights to make, to some extent, reservation out of residential preference, which may include institutional preference as laid down by the Supreme Court, referred to above. What has been done in the present case is that the entire admission to the 85 per cent seats in the State of Haryana which are to be regulated by the State of Haryana is being made on the basis of residential, institutional preference coupled with general reservation, as referred to above.

40. Taking up question No. I as framed above, it deserves to be noticed that under Annexure P.1 now admission to MBBS and BDS stands restricted to students who have passed, 10th 10 + 1 and 10 + 2 examinations from schools or colleges in the State of Haryana. The stand of the respondents is that the stay of the student for a period of three years is sufficient to treat such a student as resident of Haryana and thus eligible to admission. The object of the State that by so providing admission is being limited to the residents of the State only appears to have been achieved. However, this clause is to be examined on the touch stone of discrimination, it has created, violating Article 14 of the Constitution. If put otherwise, genuine residents of the State of Haryana have been denied admission on the ground that they have not passed all the examinations aforesaid or some of them from institutions situated in Haryana. Facts of some of the case described above show that petitioners in these cases, though residents of Haryana, are being denied their right of being considered for admission when they are of 17 years of age and have passed 10 + 2 examination from institutions situated either in Haryana or outside Haryana.

41. It may be observed that children of residents of Haryana, who for varied reasons such as for better education or transfer of their parents to other states, happened to pass 10 + 2 examination or 10th or 10 + 1 examinations from schools or colleges situated in other States are not to be denied their right of admission in MBBS and BDS courses in the Medical Colleges in the State of Haryana. If similar provision as is in Haryana, is made in other States, such students would not get chance to seek admission in other States as well. The object of providing admission on the basis of residential preference is not achieved, rather it is frustrated causing discrimination amongst the students. The

argument of learned counsel for the respondents that such students are not completely debarred from seeking admission to MBBS/BDS Course in the State of Haryana as they can compete against 15% seats on All India Basis deserves to be rejected. Such seats are filled entirely on different principles keeping in view such number of seats in other states which have so opted. Students of other States can also compete for seats in the State of Haryana. As already observed above principles of admission applicable of 15% seats on all India basis and of Post Graduate Courses cannot be applied to admission to MBBS and BDS course qua 85% seats in the respective States. The State could provide for institutional preference to some extent out of residential preference but that too within the limits of the Constitutional provision. By making provision that only such of the students can seek admission to MBBS/BDS Courses who have passed 10th, 10 + 1 and 10 + 2 examinations from schools and colleges within the State of Haryana it has violated Article 14 of the Constitution. Question No. 1 is answered as such.

Re: Question No. 2:-

42. As far as corrigendum-Annexure P.2 is concerned, the same is again arbitrary and discriminatory in view of the principle of law laid down in the case of Deepak Sibal (supra). By issuing corrigendum, no doubt, an effort was made to accommodate the children of the employees of the State who are stationed at Panchkula and their children had passed 10th, 10 +1 and 10 + 2 from Chandigarh which is capital of the State of Haryana. As far as making eligible such candidate is concerned, there is not dispute but the States has denied the aforesaid relief to similarly situated other employees may be private employees who are stationed at Panchkula or in other towns in the State of Haryana whose children have completed education upto 10 + 2 from Chandigarh. Article 14 of the Constitution is violated. To that extent such of the petitioner would be entitled to consideration for admission to the MBBS/BDS course out of 85% seats to be filled by the State of Haryana.

Re: Question No. 3:

43. The contention of the petitioners is that corrigendum-Annexure P.2 was not produced before the Executive Council of the University and thus it did not become "an ordinance" having force of law.

By corrigendum the benefit could not be extended and that too arbitrarily to the wards of the State employees stationed at Panchkula who had taken education at Chandigarh. The stand of the University is that corrigendum is merely a resolution of the Admission Committee to regulate the examination and this was not required to be placed before the Executive Council. At page 101 of the University Calendar is Ordinance relating to admission committee. Rule 1 thereof provides that admission of students of the University shall be regularised by a committee of the Academic Council to be called "Admission Committee", consisting of the following:-

"(a) Vice Chancellor or his nominee.

(b) Deans of Faculties.

(c) One principal from each of the following categories of colleges/institutions recognised/maintained by the University to be nominated by the Vice-Chancellor for a term of two years:-

(i) Colleges/institutions maintained by the University,

(ii) Govt. colleges other than the colleges of education,

(iii) Professional colleges including colleges of education,

(iv) Other non-govt. colleges.

(d) Two members to be nominated by the Academic Council from amongst its own members, for a term of two years.

(e) Controller of Examinations.

(f) Registrar.

Two-fifths of the members will form the quorum."

44. As per assertion made in the written statement, the Vice-Chancellor had referred the matter to the Admission Committee who took the final decision as contained in Annexure P.2 Rule 2 of the aforesaid ordinance at page 101 of the Calendar authorises the Admission Committee to decide the manner in which the admission to the University teaching departments and to the colleges (sic)/ maintained by the University shall be regulated. Sub-clause (b) of Rule (sic) (sic) provides for the admission Committee to decide such other matters as may be referred to it by the Vice-Chancellor. In this view of the matter corrigendum. Annexure P.2 is taken as a resolution of the admission Committee which did not require to be placed before the Executive Council of the University. It is not "an ordinance". Question No. 3 is answered accordingly.

45. For the reasons recorded above, all the writ petitions are allowed with the direction to the respondents to so frame the eligibility criterion that it may not infringe the provisions of Article 14 of the Constitution and that the Criterion provided under Rule 1 at Annexure P.1 and under the corrigendum - Annexure P.2 to the extent it debars the petitioners from seeking admission to MBBS/BDS courses against 85 per cent seats meant for the State citizens, is held to be violative of Article 14 of the Constitution. There will be no order as to costs.

FINAL JUDGMENT

G.S. Singhvi, J.

46. Not a year passes in which admission to the professional courses, like M.B.B.S/B.D.S. does not become subject matter of challenge in writ petitions filed in the High Courts all over the country. Admission to these courses in the States of Punjab and Haryana are no exception to this. This shown the intensity

of the competition question even at the stage of admission to these courses which ultimately lead to the award of Degree. The competition for admission to the post-graduate courses in the Medical education is sufficient that for each seat a number of petitions are invariably filed in the High Courts. As and when challenge is made to the methodology of the examination conducted by the Universities and other governmental agencies, for actual determination of merit and fixation of priorities the Courts try to settle the matter within the constitutional parameters. During the last one decade a number of decisions have been rendered by the apex Court in cases involving challenge to admission to such courses and yet there is no end to the litigation.

47. The present controversy comes before me in view of the difference of opinion between brother A.L. Bahri, J. and brother N.K. Kapoor, J. on the issue of validity of the eligibility conditions prescribed by respondent No. 2 (Maharishi Dayanand University, Rohtak), with the approval of the Government. Brother A.L. Bahri, J. has held that the prescription of the condition, namely, that the candidate should have studied 10th, 10 + 1 and 10 + 2 classes as a regular student in the recognised institutions in Haryana is ultra vires to the provisions of Article 14 of the Constitution. He has further held that the corrigendum Annexure P.2 issued by respondent No. 2 is contrary to Article 14 of the Constitution in so far as it denies eligibility to the wards of private employees who are stationed at Panchkula and other towns in the State of Haryana and whose children have completed education up to 10 + 2 class at Chandigarh. Brother N.K. Kapoor, J., on the other hand, has held that the condition requiring a candidate to have studied 10th, 10 + 1 and 10 + 2 classes as a regular student in the recognised institutions in Haryana does not suffer from any constitutional infirmity. He has also held that the corrigendum issued by the Government of Haryana does not suffer from the vice of arbitrariness and it is not contrary to Article 14 of the Constitution. However, on the issue as to whether Annexure P.2 was required to be approved by the Executive Council of the University so as to become an Ordinance, both have expressed concurrent views.

48. Before me, learned counsel for the petitioners led by Shri R.S. Mittal, Senior Advocate, have vehemently attacked the rules framed by respondent No. 2 for admission, to M.B.B.S. course (1994). Arguments have been advanced by the learned counsel for the petitioners on different facts of the challenge to the impugned rules on the ground of violation of Articles 14 and 15 of the Constitution, the competence of the University to issue the impugned rules as well as the corrigendum Annexure P.2. Shri Ashok Aggarwal, Senior Advocate, on the other hand, made all out efforts to justify the impugned rules and submitted that even if some hardship is suffered by the wards of persons who had earlier been the residents of Haryana or who may now be residents of Haryana, the Court should not condemn the impugned rules as violative of Articles 14 and 15 of the Constitution. Shri Aggarwal strenuously argued that in academic matters involving policy decisions relating to admissions - academic bodies, like the University, should have absolute freedom and the Court should not substitute its

own opinion about the propriety and fairness of the rules for admission.

In order to deal with the rival submissions in the context of difference of opinion between brother A.L. Bahri, J. and brother N.K. Kapoor, J. it is necessary to make a reference to the factual position of those cases.

49. In C.W.P. No. 7001 of 1994 petitioner Meenal Sharma is resident of Panchkula. She passed the Matriculation examination from the Bhartia Bhawan Vidyalya, Chandigarh, and then 10 + 2 examination from the Central Board of Secondary Education (for short "the C.B.S.E."). Her parents are doctors having a nursing home at Panchkula and they are the residents of Haryana. In C.W.P. No. 6766 of 1994 petitioner Gaurav Bansal studied at Saraswati Public School, Sonapat, from Class I to Class IV. He passed the 10th examination from Kulachi Hans Raj Model School, New Delhi, and then did 10 +1 and 10 + 2 classes from the Shambhu Dayal Modern School, Sonapat. In C.W.P. No. 7231 of 1994 petitioners Anant Madaan and Aman Aggarwal who are said to have born at Rohtak and Kurukshetra respectively studied within the State of Haryana and passed 10th class from Saint Theresa Convent School, Karnal, Both of them passed their 10 + 2 examination from the Delhi Public School, Delhi. They have claimed that their parents are permanent residents of the State of Haryana and are medical practitioners with the said State. In C.W.P. No. 7276 of 1994, petitioner Vikas Dambla passed 10th class examination from Sonapat and then did his 10 + 2 from Bal Bharti Public School, New Delhi. He claims that his father possesses domicile certificates issued by the Sub Divisional Officer (Civil) on 9.3.1993 and 24.6.1993. Anu Sharma, who is petitioner in C.W.P. No. 7441 of 1994 has come out with a case that she is a domicile of Haryana. Her parents are practising as doctors at Karnal. She did her 10 + 1 and 10 + 2 examinations from the Delhi Public School, R.K. Puram, New Delhi. C.W.P. No. 7036 of 1994 has been filed by Miss Shaloo and Miss Nidhi Garg. Both of them have claimed that they were born in Haryana. Their Parents are permanent residents of Haryana since generations. They passed 10th class examination from the C.B.S.E. Then they took admission in the Government Senior Secondary School, Sector 18, Chandigarh, and D.A.V. Model School, Chandigarh, and have passed 10 + 2 examination conducted by the C.B.S.E. New Delhi. Meetu Chhabra and Ashish Sharma petitioners in C.W.P. No. 7445 of 1994 have claimed that their parents are the residents of Haryana and both of them have passed 10th and 10 + 2 examinations from Chandigarh. In C.W.P. No. 8324 of 1994 petitioner Sandeep Arora is said to have studied in Sainik School, Kapurthala, and passed the examinations from Chandigarh. In C.W.P. No. 8324 of 1994 petitioner Sandeep Arora is said to have studied in Sainik School, Kapurthala, and passed the examinations conducted by the C.B.S.E. In C.W.P. No. 7466 of 1994 petitioners Gaurav and Alka Chauhan are said to be the residents of Gurgaon. Petitioner No. 1 passed the Matriculation examination while studying at the Air Force Central School, New Delhi Cantt and then 10 + 2 examination from the Rotary Public School, Gurgaon. His father is a doctor by profession. Petitioner No. 2 passed the Matriculation examination from Gurgaon and then 10 + 2

examination as a student of Air Force Senior Secondary School, Palam, Delhi Cantt. C.W.P. No. 7467 of 1994 has been filed by Dinesh Madan who says that he is a resident of Gurgaon, had studied up to 10th class at Gurgaon and passed his 10 + examination from a school in New Delhi. He has produced the domicile certificate issued by the City Magistrate, Gurgaon, on 26.5.1994, Annexure P.3. C.W.P. No. 7764 of 1994 has been filed by Balijinder Singh. He has stated that he belongs to the State of Haryana. In support of this, he has produced the domicile certificate dated 16.5.1994. He passed the Matriculation examination conducted by the C.B.S.E. as well as 10 + 2 examination from Chandigarh. In C.W.P. No. 7891 of 1994 petitioner Vikas Garg has stated that he was born at Sirsa and his father is also a resident of Sirsa running a private nursing home there. He studied up to 9th class at Sirsa and the passed the Matriculation examination and 10 + 2 examination from Pilani. He has produced domicile certificate dated 21.5.1994. In C.W.P. No. 7947 of 1994 Roma Mehta has alleged that she is a resident of Yamunagar. For better studies she had joined Saint Mary S. Convent School, Kasauli. She passed the Matriculation examination from the C.B.S.E. She passed 10 + 1 and 10 + 2 examinations while studying at Yamunagar. In C.W.P. No. 8004 of 1994 Miss Suchita Verma has stated that she had passed Matriculation examination from the Yadvindra Public School, Chandigarh.

In C.W.P. No. 8002 of 1994 Miss Niyati Makani has come forward with a case that she belongs to Sirsa. She had passed 10th class and 10 + 2 examination conducted by the C.B.S.E. at Chandigarh. In C.W.P. No. 8087 of 1994 petitioner Rohit Jain says that he is a resident of Panchkula since 1989. He did his Matriculation from Chaman Lal D.A.V. Public School, Panchkula, and then passed his 10 + 2 examination from D.A.V. College, Chandigarh. In C.W.P. No. 8095 of 1994 petitioner Shalini Jain has stated that she is permanent resident of Ganaur. She studied up to 8th class at Ganaur and then passed her 10th as well as 10 + 2 examinations from New Delhi. C.W.P. No. 8104 of 1994 has been filed by Mitunjai Kaushal. He has stated that he is a domicile of Ambala district and has passed his 10 + 2 examination from the C.B.S.E. as a student of Daya Nand Anglo Vedic College", Chandigarh. In C.W.P. No. 8108 of 1994 Miss Pooja Bhatnagar has alleged that she is a resident of Chandigarh and has passed the Matriculation as well as 10+ 2 examinations from Chandigarh. C.W.P. No. 8110 of 1994 has been filed by Omi Jindal who claims himself to be a resident of Kaithal and has passed 10th and 10 + 1 examinations from Kaithal and 10 + 2 examination from Chandigarh. In C.W.P. No. 8111 of 1994 petitioner Sarika Mehta claims herself to be a resident of Haryana but has passed 10th examination from Kasauli. She did pass her 10th examination from the Punjab School Education Board. C.W.P. No. 8112 of 1994 has been filed by Shaveta Arora whose father joined as Manager of Padha Branch of New Bank of India. She passed her 10th examination from Tagore Bal Niketan School, Karnal. She passed 10 + 1 from Dayal Singh College, Karnal and 10 + 2 examination as a student of Government College for Girls at Chandigarh. Anchal Gupta who is petitioner in 8113 of 1994 also states that his father is an employee of Punjab

National Bank. He is a resident of Panchkula. He passed 10th, 10 + 1 and 10 + 2 examinations from Chandigarh. Miss Reeta Singh who is petitioner in C.W.P. No. 8118 of 1994 states that she is resident of the State of Haryana but has passed 10th and 10 + 2 examinations from Delhi because her father is a practising Advocate in the Supreme Court. C.W.P. No. 8120 of 1994 has been filed by Happy Yadav. She states that she has passed her 10th 10 + 2 examinations from New Delhi because it is nearer to Haryana and that she as well as her family has been residing within the State of Haryana. In C.W.P. No. 8121 of 1994, Ajay Gupta is said to have passed 10th class from Gurgaon and 10 + 2 examination from Delhi. In C.W.P. No. 8123 of 1994 petitioner Ashish Sharma says that he is the son of a regular employee of Kendriya Vidyalaya Sanghathan, New Delhi, who was transferred to Chandigarh in 1993 and the petitioner has passed 10 + 2 examination as a student of a school in Chandigarh. C.W.P. No. 8146 of 1994 has been filed by Gagan Gupta and 6 others all of whom have passed 10 + 2 examination from New Delhi. In C.W.P. No. 8150 of 1994 both the petitioners have passed their 10th and 10 + 2 examinations from Chandigarh/New Delhi. Petitioner Aarti Gupta in C.W.P. No. 8152 of 1994 passed her 10th, 10 + 1 and 10 + 2 examinations from New Delhi. Pawan Kalra is petitioner in C.W.P. No. 8168 of 1994. He has passed his 10th examination from a school at Gurgaon. However, he has not indicated as to from which place he passed 10 + 2 examination. Moreover, the school from which he has passed the Matriculation examination is not recognised by the Government of Haryana. Identical is the position of the petitioner in C.W.P. No. 8167 of 1994. Manu Bansal is petitioner in C.W.P. No. 8174 of 1994.

He has claimed that he has passed 10th examination as a student of Sant Nischal Singh Public School, Yamunanagar and 10 + 2 examination as a student of D.A.V. College, Chandigarh. C.W.P. No. 8196 of 1994 has been jointly filed by Mona Batra and Yukta Mehta. Petitioner No. 1 did her education at Ajmer and petitioner No. 2 at Chandigarh. In C.W.P. No. 8240 of 1994, Veena Singla has come out with a case that she had to study for 10th class at Chandigarh and she passed 10 + 1 and 10 + 2 examinations from the Chaman Lal D.A.V. Senior Secondary School, panchkula. Petitioners Swati and Ashutosh in C.W.P. No. 8248 of 1994 have passed their examinations from schools outside Chandigarh and the State of Haryana. They claimed that on account of service of their parents, they had to study outside the State of Haryana. Petitioner Seema Dua in C.W.P. No. 8262 of 1994 passed her 10th examination from Delhi and 10 + 2 examination from Sonapat. In C.W.P. No. 8271 of 1994 petitioner Sarbjeet Kaur has stated that she has passed 10th, 10 + 1 and 10 + 2 examinations from Chandigarh. In C.W.P. No. 8285 of 1994 Sushil Kumar has stated that he passed 10th examination from a school at Dabwali and 10+1 and 10 + 2 examinations from Chandigarh. Bharat B. Dua (C.W.P. No. 8340 of 1994) says that he is a resident of Hodal. However, for better studies he has taken his education at Shimla (Himachal Pradesh). C.W.P. No. 8341 of 1994 has been filed by petitioner Miss Rajni Mahajan who states that she is a resident of Panchkula but on account of lack of proper

educational facilities she has passed 10th, 10 + 1 and 10 + 2 examinations from schools in Chandigarh. In C.W.P. No. 8468 of 1994 petitioner Anita Verma states that she is a resident of Panchkula but has passed 10th and 10 + 2 examinations from Chandigarh on account of lack of educational facilities at Panchkula. C.W.P. No. 8563 of 1994 has been filed by Ajay Malhotra who states that he is a resident of Haryana and has passed his 10th, 10 + 1 and 10 + 2 examinations from Chandigarh. Bhuvnesh Gupta petitioner in C.W.P. No. 8611 of 1994 states that he is an employee of Haryana but passed his 10th, and 10 + 2 examinations from New Delhi. Jatinder Singh has filed C.W.P. No. 8606 of 1994 with an allegation that he was admitted to the Sainik School Nagrota (Jammu) and has passed his 10 + 2 examination as a student of that school. In C.W.P. No. 8686 of 1994 Sangita Angrish says that she passed the 10th examination conducted by the C.B.S.E. in 1992 as also 10 + 2 examination conducted by the said Board. She has, however, not stated as to in which school she had studied before taking examinations conducted by the C.B.S.E. C.W.P. No. 8704 of 1994 has been filed by Shalini Sharma who states that she is a resident of Haryana (Karnal) but has passed 10 + 1 and 10 + 2 examinations from New Delhi. C.W.P.No.8678 of 1994 has been filed by Deni Gupta. He says that he has passed Matriculation examination from Bahadurgarh and then did 10 + 2 examination from New Delhi. His family is residing in Haryana for a number of years. Similar is the position in C.W.P. No. 8679 of 1994 filed by Mayank Gupta. The only difference in his case and the case of Deni Gupta is that Mayank Gupta has passed 10 + 2 examination from New Delhi. In C.W.P. No. 8680 of 1994 Bhawna Soneja has stated that her family is residing in Haryana (Rohtak) for the last many years but in order to get better education she has passed 10th and 10 + 2 examinations from New Delhi. C.W.P. No. 8783 of 1994 has been filed by Rajneesh Kumar who says that he is a permanent resident of Panchkula town and has passed the 10 + 1 and 10 + 2 examinations from Panchkula although he had passed the Matriculation examination from Mohali (Punjab). C.W.P. No. 8751 of 1994 has been filed by Reena Shivrain with an allegation that she has passed 10th and well as 10 + 2 examinations from Delhi because her father is an employee of the Government of India. C.W.P. No. 8772 of 1994 has been filed by Krishna Kumar who says that he has passed 10 + 2 examination from Delhi because at the relevant time his father was a teacher in the Delhi Administration. C.W.P. No. 7938 of 1994 has been filed by Sahib Sangwan who claims that he is a permanent resident of Haryana. He has studied at Jagadhri but passed his 10th and 10 + 2 examinations from Mussoorie.

50. In all these petitions the petitioners have claimed that they are domicile/residents of Haryana. Majority of them have stated that their fore-fathers and parents have been living in the State of Haryana. Some of them had to go out of the State because their parents are in the employment of the Government of India or such bodies where job-transfer is on all India basis. Some of the petitioners have stated that on account of lack of proper educational facilities they had passed 10th or 10 + 1 or 10 + 2 examination from a school outside the

State of Haryana. All of them have, however, jointly made a grievance that despite their being residents of Haryana, respondent No. 2 has arbitrarily excluded them from appearing in the entrance test by laying down the requirement of passing 10th, 10 + 1 and 10 + 2 examinations from a school recognised by the Haryana Board of Secondary Education. Petitioners have pleaded that till 1993 no such condition had been incorporated in the rules of admission and for the first time respondent No. 2 has introduced a wholly arbitrary and unreasonable criteria which directly results in the exclusion of a large number of bona fide residents of Haryana from the zone of competition. The grievance of the petitioners is that the situs of the educational institutions cannot furnish a valid basis for classification of the resident of Haryana for the purpose of admission to the M.B.B.S. Course. Another grievance made by the petitioners is that while there is relaxation in the conditions of eligibility in favour of the employees of the Government of Haryana as well as the agencies and instrumentalities of the Haryana Government and members of All India Service, such relaxation is not open to the wards of other employees. Plea of the petitioners is that this restricted relaxation suffers from the vice of arbitrariness and is, therefore, liable to be quashed. Another facet of the grievance made by some of the petitioners is that by corrigendum Annexure P.2 students passing 10th, 10 + 1 and 10 + 2 examinations from Chandigarh have been brought within the zone of consideration but at the same time the University has imposed a wholly unwarranted condition that such candidates cannot appear in the pre-medical test for admission to the M.B.B.S. Course which may be conducted at Chandigarh or at other places in the country.

In its detailed counter filed in C.W.P. No. 7001 of 1994, respondent No. 2 has made reference to the fact that the Government of Haryana had received, a number of representations from various organisations against the mal-practices prevalent in the matter of admission to M.B.B.S. Course by those who were able to secure false domicile certificates. The Government was apprised of the fact that a number of students who were receiving their education in Delhi and in the neighbouring States could arrange domicile certificates by corrupt means which created serious complications in the process of admissions and the University itself was made to enter into litigation in a large number of cases. These complaints were also sent to the Director, Medical College, Rohtak, and the Vice-Chancellor of the University. After examination of these complaints and after taking into consideration the recommendations of the Director, Medical College, Rohtak the Vice-Chancellor referred the matter to the Admissions Committee. The said Committee considered the entire matter and made its recommendations which were forwarded to the Government. The Government approved the recommendations of the Committee in the prospectus issued for the entrance test of 1994. Further assertion of the respondents is that before the revised eligibility criteria was introduced, the Committee had considered the eligibility conditions prevalent in the State of Rajasthan as well as the Union Territories of Delhi and Chandigarh. Respondents have further stated that in order to protect

the interests of the bona fide candidates of Haryana, the condition of study in 10th, 10 + 1 and 10 + 2 classes as a regular candidate in the recognised institutions in Haryana has been introduced with the object of preventing candidates from outside Haryana, who could otherwise participate in the process of selection. This is also intended to secure a fair length of time for which the student must have resided in Haryana. Both these objectives sought to be achieved by the impugned guidelines do not in any manner affect the constitutional validity of the decision of the University. The respondent-University has also come forward with a plea that after the issue of the prospectus a corrigendum was issued keeping in view the fact that Chandigarh is the capital of Haryana and it would be unreasonable to exclude those who have studied at Chandigarh for their 10th, 10 + 1 and 10 + 2 examinations. Another purpose sought to be achieved by the impugned corrigendum is that the residents of Panchkula, which falls within the State of Haryana, had little option but to admit their wards in the educational institutions at Chandigarh and, therefore, taking into consideration their difficulties the Government decided to relax the condition of eligibility in their cases. Yet another justification offered by the respondents is that in the State of Rajasthan also a candidate is required to undertake study continuously for a period of 3 years before the qualifying examination and similar conditions have been incorporated by the Union Territory of Chandigarh and the authorities of Delhi. The respondent-University has pleaded that the corrigendum was issued by the University after it was approved by the Admissions Committee of the University which is fully empowered to do so under the University Act and the Ordinances.

51. After making an elaborate discussion on the subject and reference to various cases, A.L. Bahri, J. held. -

"After the perusal of the judgments referred to above, it is crystal clear that there has to be 15% admission in all the colleges in the State excepting the States of Andhra Pradesh and J. & K. on the basis of all India entrance test. With regard to the remaining 85%, the admission has to be regulated by the States wherein such medical colleges are situated, keeping in view the reservation policies i.e. with regard to Scheduled Castes, backward Classes, Ex-Servicemen etc. Even for admission to 85% seats as above, there has to be admission by open competition i.e. taking 85% as a unit 30%; thereof has to be by open competition from residents of Haryana passing 10 + 2 examination and the remaining by way of reservation/preference. The State would be within its rights to make, to some extent, reservation out of residential preference, which may include institutional preference as laid down by the Supreme Court, referred to above. What has been done in the present case is that the entire admission to the 85 per cent seats in the State of Haryana which are to be regulated by the State of Haryana is being made on the basis of residential/institutional preference coupled with general reservation, as referred to above. Taking up question No. 1 as framed above, it deserves to be noticed that under Annexure P.1, now admission to MBBS and BDS stands restricted to students who have

passed 10th, 10 + 1 and 10 + 2 examinations from schools or colleges in the State of Haryana. The stand of the respondents is that the stay of the student for a period of three years is sufficient to treat such a student as resident of Haryana and thus eligible for admission. The object of the State that by so providing admission is being limited to the residents of the State only appears to have been achieved. However, this clause is to be examined on the touch stone of discrimination, it has created, violating Article 14 of the Constitution. If put otherwise, genuine residents of the State of Haryana have been denied admission on the ground that they have not passed all the examinations aforesaid or some of them from institutions situated in Haryana. Facts of some of the cases described above show that petitioners in these cases, though residents of Haryana, are being denied their right of being considered for admission when they are of 17 years of age and have passed 10 + 2 examination from institutions situated either in Haryana or outside Haryana.

It may be observed that children of residents of Haryana, who for varied reasons such as for better education or transfer of their parents to other states, happen to pass 10 + 2 examination or 10th or 10 + 1 examinations from schools or colleges situated in other States are not to be denied their right of admission in MBBS and BDS courses in the Medical Colleges in the State of Haryana. If similar provision as is in Haryana, is made in other States, such students would not get chance to seek admission in other States as well. The object of providing admission on the basis of residential preference is not achieved, rather it is frustrated causing discrimination among the students. The argument of learned counsel for the respondents that such students are not completely debarred from seeking admission to MBBS/BDS Course in the State of Haryana as they can compete against 15% seats on All India Basis deserves to be rejected. Such seats are filled entirely on different principles keeping in view such number of seats in other states which have so opted. Students of other States can also compete for seats in the State of Haryana. As already observed above principles of admission applicable to 15% seats on all India basis and of Post Graduate Courses cannot be applied to admission to MBBS and BDS courses qua 85% seats in the respective States. The State could provide for institutional preference to some extent out of residential preference but that too within the limits of the Constitutional provision. By making provision that only such of the students can seek admission to MBBS/BDS Courses who have passed 10th, 10+1 and 10 + 2 examinations from schools and colleges within the State of Haryana it has violated Article 14 of the Constitution. Question No. 1 is answered as such."

N.K. Kapoor, J. held-

" In the present case, the respondents have assigned cogent reasons for inserting such like clause in its eligibility criteria and as held earlier the same has rational basis to the object sought to be achieved i.e. to exclude the persons getting admission on the basis of bogus/fake domicile certificates and secondly to debar persons from claiming preferential treatment (i) on account of

permanent residence/domicile and (ii) on account of institutional preference from two different sources."

52. On the second question pertaining to the validity of corrigendum also, both the learned Judges expressed divergent opinion. Bahri, J. held that although by issuing corrigendum an offer was made to accommodate the children of the employees of the State who are stationed at Panchkula and whose children have passed 10th, 10 + 1 and 10 + 2 examinations from Chandigarh, the State Government has denied similar treatment to other employees, including private employees, who are stationed at Panchkula, or any other town in the State of Haryana whose children have completed education upto 10th class from Chandigarh. Kapoor, J. expressed the view that the corrigendum was wholly unnecessary and in fact has resulted in dilution of the real purport of the eligibility criteria. He further held that the corrigendum, which is in the nature of concession, does not suffer from any constitutional infirmity.

53. The admitted position which has emerged before the Court is that till 1993 the eligibility criteria contemplated admission to the residents/domicile of Haryana as defined in the Government of Haryana letter No. 62/29/64-65-CSI dated 10.9.1991. A candidate passing Senior Secondary examination of the School Education Board, Haryana, or an examinations equivalent thereto recognised by the M.D. University and other higher examinations was treated eligible. What has been done by the impugned criteria is to limit consideration only from amongst those candidates who have studied 10th, 10 + 1 and 10 + 2 classes as regular candidates in the recognised institutions in Haryana. Exception has been provided in Paras 8.2 and 8.3. in favour of the children/wards of the employees appointed on regular basis of Haryana State Government/members of I.A.S. borne on the Haryana cadre/Statutory Bodies/Corporations established by or under an Act of the State of Haryana whether posted in Haryana or outside, and children/wards of the employees of Indian Defence Services/para-military forces belonging to Haryana State at the time of entry into service.

54. Right of the Government to lay down the conditions of eligibility for admission to medical and engineering colleges was questioned before the Supreme Court but negatived in R. Chitralekha and Another Vs. State of Mysore and Others, . Their Lordships held that an order issued by the State Government for laying down the procedure for admission of the students neither encroached on the field covered by Entry 66 of List 1 nor contravenes the provisions of the Mysore University Act. Their Lordships held-

"The State Government has power to prescribe a machinery and also the criteria for admission of qualified students to Medical and Engineering colleges run by the Government and with the consent of the management of the Government aided colleges, to the said colleges also.

The Court further held that-

"The Government run most of medical and engineering colleges. Excluding the

State aided colleges, the position is as follows. The colleges run by the Government, having regard to financial commitments and other relevant consideration can only admit a specific number of students to the said Colleges. They cannot obviously admit all the applicants who have secured the marks prescribed by the University. It has necessarily to screen the applicants on some reasonable basis.

Once it is conceded, that the State Government can run medical and engineering Colleges, it cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it."

55. In *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, reservation of seats for certain categories for admission to medical colleges was challenged on the anvil of violation of Article 14. While rejecting the challenge, the Supreme Court held-

"It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification."

56. University-wise distribution of seats in the Government Colleges was assailed in *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, , and their Lordship held -

"The candidates passing through the qualifying examination held by a University form a class by themselves as distinguished from those passing through such examination from the other two Universities in the State. Such a classification has a reasonable nexus with the object of the rules namely to cater to the needs of candidates who would naturally look to their own University to advance their training in technical studies.

Such a basis for selection has not the disadvantage of district-wise or unit-wise selection as any student from any part of the State can pass the qualifying examination in any of the three Universities irrespective of the place of his birth or residence. Further, the rules confer a discretion on the selection committee to admit outsiders upto 20% of the total available seats in any one of these colleges, i.e. those who have passed the equivalent examination held by any other University not only in the State but also elsewhere in India. The fact that a candidate having lesser marks from another University does not necessarily mean that a less meritorious candidate gets advantage over a more meritorious

one. As is well known, different Universities have different standards in the examinations held by them."

57. In *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, , on which both the sides have placed reliance, their Lordships referred to all the cases commencing from *D.P. Joshi Vs. The State of Madhya Bharat* and Another, and ending with *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, , The Supreme Court also referred to the judgments in *Minor P. Rajendran v. State of Madras* AIR 1963 S.C. 1012 wherein district-wise distribution of seats was declared unconstitutional; *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, wherein University-wise distribution of seats was declared unconstitutional; *Vasundra v. State of Mysore* AIR 1971 S.C. 1489 wherein too validity of reservation based on residence requirement with the State for the purpose of admission to medical colleges was upheld, and then proceeded to observe-

"These decisions which all relate to admission to MBBS course are binding upon us and it is therefore not possible for us to hold, in the face of these decisions, that residence requirement in a State for admission to MBBS course is concerned, residence requirement in a State can be introduced as a condition for admission to the MBBS course.

The Court further held -

"We are therefore of the view that a certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalise opportunities for medical admission on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on this count may also include institutional reservation for students passing the PUC or premedical examination of the same university or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the State and for this purpose, there should be no distinction between schools affiliated to State Board and schools affiliated to the Central Board of Secondary Education."

The Court also took note of the policy of the Government of India and then remarked -

"We are glad to find that the policy of the Government of India in the matter of reservation based on residence requirement and institutional preference accords with the view taken by us in that behalf. We may point out that even if at some stage it is decided to regulate admissions to the MBBS course on the basis of All India Entrance Examination," some provision would have to be made for allocation of seats amongst the selected candidates on the basis of residence or institutional affiliation so as to take into account the aforementioned factors."

The Court then proceeded to examine as to what percentage of seats should be filled with reference to reservation based on residence requirement and

institutional preference. Though the Court condemned the wholesale reservations made by some of the State Governments on the basis of domicile or residence requirement within the State or on the basis of institutional preference but expressed the view that 70% of the total number of seats be appropriately reserved with reference to the residence requirement within the State for institutional preference. This view of the Supreme Court is evident from a reading of para 21 of the judgment.

58. In *Nidamarti Maheshkumar Vs. State of Maharashtra and Others*, , Rule B (2) of the Rules of Admission to the M.B.B.S. Course in the State of Maharashtra, which contemplated that the students passing 10 + 2 examination of Maharashtra State Board of Secondary and Higher Secondary Education from schools/colleges situated within the jurisdiction of one University shall not be eligible for admission to medical college/colleges situated in the jurisdiction of another University, was struck down on the ground of violation of Article 14 of the Constitution. The Court held that to compartmentalise the State into different regions and provide that a student from one region should not be allowed to migrate to another for medical education would amount to violation of equality clause of the Constitution. While striking down the rule under challenge, the Supreme Court observed -

"But we would like to make it clear that it would not be unconstitutional for the State Government to provide for reservation or preference in respect of a certain percentage of seats in the medical college or colleges in each region in favour of those who have studied in schools or colleges within that region and even if the percentage stipulated by the State Government is on the higher side, it would not fall foul of the constitutional mandate of equality."

59. In *Dr Fazal Ghafoor Vs. Principal, Osmania Medical College, Hyderabad and Others*, , denial of admission to a student on the ground that he was not a local candidate was upheld by the Supreme Court. The Supreme Court confirmed a decision of a Division Bench of Andhra Pradesh High Court which held that provisions of Article 14 have not been violated merely because the petitioner was denied admission to post-graduate course on the ground that he was not a local candidate within the meaning of clause 6 of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974.

60. In *Deepak Sibal Vs. Punjab University and Another*, , their Lordships of the Supreme Court held that a rule restricting admission to the employees of Government/Semi-Government bodies and similar institutions to Evening Classes in LL.B. (Three Year Degree Course) was discriminatory and arbitrary. On that ground the Supreme Court struck down the rule.

61. In *Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others*, , their Lordships declared that a rule providing for college-wise institutional preference for admission to post-graduate courses was violative of Article 14 of the Constitution.

62. In *Meenakshi Malik Vs. University of Delhi and Others*, , their Lordships of the Supreme Court held that the condition of schooling for last two years in a school in Delhi is unreasonable, vis-a-vis a candidate who had to leave for a foreign country on transfer of his parents.

63. Having regard to the various judgments of the Supreme Court in the matter of admissions, I may now take note of some of the decisions of the High Courts on which reliance has been placed by the learned counsel for the petitioners. *Kr. Archana v. The Dean, Government Medical College, Nagpur* A.L.R. 1987 S.C. 155 was a case wherein a ward of defence personnel, who was a permanent resident of Maharashtra, was denied admission on the ground that she had not passed her qualifying examination of 12th Standard Indian School Certificate Examination from an institution located in Maharashtra State. The Court held that daughter of a service man, who is a domicile of Maharashtra, cannot be denied admission only because of a fortuitous circumstances of his not being posted at the time of his ward studying in 12th Standard within the State of Maharashtra cannot have any nexus with the object of the rule.

64. In *Mhawl Abdulaziz Gulamhusein and Anr. v. Dean, Goa, Medical College, Panaji, Goa* 14 AIR 1974 Goa 26 it was held that a rule denying admission to a student on the ground that he had not passed the Inter Science Examination from colleges within the territory of Goa, Daman and Diu is ultra vires to the Constitution. The argument that a classification based on attendance or keeping of terms for the one year course of Inter Science in colleges of the territory was accepted for striking down the rule on the ground that this classification has no relation with the object sought to be achieved.

65. A close scrutiny of the judgment in *Heramba Kumar Sarma and etc. etc v. State of Assam and Ors.*, AIR 1991 Gau on which reliance has been placed by the learned counsel for the petitioners, shows that while in the head note it has been recorded that a condition of institutional preference requiring that applicant must have studied for preceding three years in the State of Assam would be discriminatory having no rational basis. However, reading of paragraph 16 of the judgment shows that the Court has in fact upheld the rule of three years. This is evident from the following extract of the judgment:-

"In the case of *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, , and *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, , the Supreme Court having cited the view points of Medical Council and that the Central Government directed to implement the Rule of 30% and 70% and later amended the same to 15% and 85%. The power to issue such direction was exercised under the new dimension of Article 14 discovered in the case of *E.P. Royappa v. State of Tamil Nadu* A.L.R. 1974 S.C. 555. This we are mentioning to discover powers of this Court. We. have traced the history of institutional preference in that the State Government can select candidates who have studied in the State of Assam. Looked at from that perspective we see no vice in the rule of three years. The only aspect the State Government did not consider is that many

students, if not all, who have passed the High School Leaving Certificate Examination in Assam may not have known as to the study of Higher Secondary Course in Assam. For the year 1988-89 we hold the rule of three years therefore may not be insisted so far as this year is concerned by the Selection Board."

The only thing which the Gauhati High Court did was to postpone the applicability of the rule for a period of one year and this they did because till 1989 an interim order was passed by the High Court directing the Government not to give effect to the impugned rule.

66. In *Ekta Arvindkumar Shah (Minor) and Another Vs. H.S. Shah and Another*, a rule restricting admission to the local candidates was found to be constitutionally infirm by a learned Single Judge of the Gujarat High Court. The petitioners in that case had sought admission to First M.B.B.S. Course after they had passed Higher Secondary Certificate Examination, which was the qualifying examination. However, Rule 4 which contained conditions of eligibility required that a candidate must be a local candidate and only that student was treated as local candidate who had passed SSC/new SSC examination from any of the high schools or colleges situated within the Ahmedabad Municipal Corporation limits. Incidentally, it is necessary to mention that the schools from which the two petitioners had passed the qualifying examination were affiliated to the Gujarat Secondary Education Board. The learned Judge held that the classification sought to be made was wholly arbitrary and unreasonable.

67. In *Nischal Gupta v. Union Territory, Chandigarh* 1992(1) RSJ 74 a learned Single Judge of this Court rejected a condition of adjustment of three previous years in various disciplines of sports for the purpose of giving admissions against the quota reserved for sportsmen.

68. Before I proceed further, I may recapitulate the principles laid down by the Supreme Court in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , indicating the guidelines on the basis of which constitutional validity of a law deserves to be tested. The principles laid down by the Supreme Court are -

"(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself.

(b) that there is always a presumption in favour of the constitutional of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the Legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the needs are deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

69. Now it is seen as to whether the conditions of eligibility incorporated in the prospectus of 1994 suffers from the vice of discrimination or are otherwise patently arbitrary or unreasonable as to be termed as unconstitutional. As observed by the apex Court from time to time validity of a legislative instrument or administrative action, when called in question on the ground of violation of Articles 14, 15, 16 etc. has to be judged in the context of various other constitutional provisions. The Court has to consider as to whether the distinction sought to be made between persons or things belonging to a particular class or group is a real and substantial distinction and as to whether the distinction has got any nexus with the purpose of the legislation or the policy of the Government. There can be no manner of doubt that the Government possesses the power to lay down the conditions for admission of the students to various professional courses including medical and engineering courses. Government bears the financial burden of running various colleges and institutions and, therefore, it has the right to decide as to from what sources the admissions shall be made. Policy framed by the Government for admission to professional course like M.B.B.S. etc. is no doubt subject to the power of judicial review vesting in the Courts and its validity can be tested on the touch-stone of various constitutional provisions, the Court cannot substitute its own judgment in place of the opinion formed by the University/Government. Interference by the Courts in policy decisions of the Government in such like matters will be still slower particularly where the policies have been framed keeping in view the working of the academic bodies like universities. Even though it is not possible to accept the submission of the learned counsel for the respondents that there is an absolute exclusion of the judicial review of the policy formulated by the academic bodies, there can be no denying that the Courts will not readily draw an inference of arbitrariness or malice while examining the constitutional validity of such decisions. The object of framing a rule/scheme/policy for admission to medical colleges is to impart medical education to the best talent available out of the class of persons who are likely to serve as Doctors for the inhabitants of the State. Therefore, the State has to formulate with reasonable foresight a scheme for imparting medical education with the object and purpose of providing best medical aid to the people of the State and to provide medical education to those

who are best suited for such education. Though merit of a candidate in a particular examination may form criteria for the purpose of admission, at times the requirement of merit will have to be tuned with the requirements of the people of the State. The object of selection for admission to medical colleges has to be met keeping in view the directive principle of the State policy contained in Part IV of the Constitution, namely, to provide medical aid to all people with a particular emphasis on the weaker sections of the society. Therefore, an attempt has to be made to select the best material from amongst the available candidates to provide the much needed medical aid to the people and to improve public health. In none of the cases the Supreme Court has held that rule of merit for the purpose of admission to the professional courses should be applied in its absolute sense. In Kumari Chitra Ghosh's case (supra); DM Chanchala's case (supra); Vasundhra's case (supra); Dr. Pradeep Jain's case (supra); Nidamarti Maheshkumar's case (supra) and in various other judgments, the Supreme Court has carved out exceptions to the rule of admission based on pure merit. Therefore, in each case where challenge is made to the constitutional validity of the scheme/rule of admission the Court has to examine as to whether the rule satisfies the doctrine of equality and as to whether the classification sought to be made between two groups of students is based on any rationale or intelligible differentia and such classification has a reasonable nexus with the object of classification.

70. What has been done by the respondents in the instant case is to lay down a requirement that a candidate must have studied in 10th, 10 + 1 and 10 + 2 classes as a regular student in the recognised institutions in Haryana. Thus, the intention of the respondents is to limit the choice of consideration from amongst the candidates who have studied for a continuous period of three years as regular students in the recognised institutions in Haryana. The object of this rule, as set out by the respondents, is two-fold. Firstly, the rule contemplates that a student who regularly studies in 10th, 10 + 1 and 10 + 2 classes in recognised institutions will reside in the State of Haryana for a period of three years and, secondly, it is intended to prevent persons with fake or bogus domicile certificates from entering into the zone of competition. The policy-makers have relied on the existing conditions of eligibility applicable for admissions to the institutions in the State of Rajasthan, the Union Territory of Chandigarh and the erstwhile Union Territory of Delhi. In Rajasthan also one of the conditions of eligibility is that a student must have studied for the last 3 years of the qualifying examination continuously as a regular candidate in a recognised institution in Rajasthan. An alternative qualification also exists in Rajasthan providing an opportunity to a candidate whose natural father or mother has resided in Rajasthan for a period of 10 years and the candidate has studied atleast for five years during this period in a recognised educational institution in Rajasthan. Such alternative condition of eligibility is not incorporation for admission in the Union Territory of Chandigarh or in the erstwhile Union Territory of Delhi. It may have been more appropriate for the respondents to have incorporated an

alternative condition similar to the one laid down by the Government of Rajasthan. However, absence of such an alternative condition, in my opinion, cannot be ground for holding that the policy formulated by the respondents, which is reflected in the 1994 prospectus, suffers from the vice of arbitrariness. The menace of forged and bogus certificates is wide-spread and is ever increasing. If that is one of the factors which has been taken into consideration by the respondents while framing the rules for determining eligibility, while keeping in view the basic idea of giving institutional preference, it is not possible to hold that requirement of 3 years continuous study in a recognised institution offends the equality clause enshrined in the Constitution. Reservation based on the requirement of residence and institutional preference has been recognised by the apex Court in unequivocal terms in Vasundhra's case (supra), Dr. Pradeep Jain's case (supra) and even in Nidamari Maheshkumar's case (supra). Institutional preference has also been upheld in D.N. Chanchala's case (supra), where University-wise distribution of seats, was held to be not offending Article 14 of the Constitution. In Dr. Pradeep Jain's case (supra), The Supreme Court clearly opined that it would be legitimate to make reservation on the basis of residence requirement and institutional preference. In Nidamarti Maheshkumar's case (supra) the Supreme Court unequivocally held that it would not be unconstitutional for the State to provide for reservation or preference in respect of a certain percentage of seats in the medical college/colleges in each region in favour of those who have studied in schools or colleges within that region and even if the percentage stipulated by the State Government is on the higher side it would not fall foul of the constitutional mandate of equality.

71. In view of the above discussion, I am in agreement with N.K. Kapoor, J. that the requirement of study as a regular student in an institution recognised in Haryana for 10th, 10 + 1 and 10 + 2 classes does not suffer from the vice of discrimination or is arbitrary.

72. I am conscious of the fact that introduction of this condition may cause some hardship in individual cases but it is a settled principle of law that mere hardship caused to one or more than one persons due to operation of a rule or a policy decision cannot be a ground for invalidating the rule or the policy decision.

73. I also find merit in the submission of Mr. Aggarwal that even if the Court was to come to a conclusion that a better and a more appropriate policy could have been formulated, it does not lie within the domain of the Court to substitute its own wisdom qua the policy decision of the respondents. Those who have framed the policy have done so after taking into consideration various relevant factors. In fact, primarily they are the best judge of deciding as to what norm should be laid down for the purpose of admissions to the medical college/courses. In these circumstances, no interference by the Court is warranted.

74. The judgments in Mhawla Abdulaziz Gulamhusein's case (supra); Heramba Kumar Sanaa's case, (supra) and Kumari Ekta Arvindkumar Shah's case (supra); on which reliance has been placed by the learned Counsel for the

petitioners, are clearly distinguishable. (sic), Abdulaziz Gulamhusein's case (supra) was decided before the judgments of the Supreme Court in Dr. Pradeep Jain's case (supra) and Nidamarti Maheshkumar's case (supra), and a close look at the judgment reported as *Mhawla Abdulaziz Gulamhusein and Anr. v. Dean, Goa Medical College at Panaji, Goa*, AIR 1974 Goa, Daman and Diu 26 shows that the main reason given for declaring the policy of admissions to be bad was that requiring a candidate to attend a particular course before he could be admitted to M.B.B.S. course was irrational and arbitrary. In *Kum. Ekla Arvindkumar Shah (Minor) and Anr. v. H.S. Shah and Anr.*, AIR 1993 Gujarat 90, the condition imposed was that a candidate should be a local candidate, i.e. he must have studied in a school situated within the local limits of the Municipal Corporation, Ahmedabad. All those candidates, who had not studied in any local school situated within the local limits of the Municipal Corporation, Ahmedabad, but had studied in the schools affiliated with the Gujarat School Education Board, were denied admission. In that factual background, a Judge of the Gujarat High Court found the condition to be arbitrary. A reading of the judgment in *Heramba Kumar Sarma and Vs. State of Assam and Others*, shows that the main reason which prevailed with the Division Bench of that Court for making observations in paragraph 15 was that a condition of 20 years' residence of the parents was incorporated in the policy framed by the Government for admissions to the medical courses. Moreover, in paragraph 16 of the judgment, the Gauhati High Court has unequivocally held that there was no vice in the rule of 3 years. *Nidamarti Maheshkumar's case* (supra), on which some of the learned counsel placed reliance, in fact, goes against the proposition canvassed by the portion of that judgment, which I have extracted at page 24 of this order, shows that their Lordships of the Supreme Court have once again recognised the right of the Government to provide for reservation for preference in respect of a certain percentage of seats in a medical college/colleges and even if the percentage of reservation is on higher side, it cannot be declared unconstitutional. The judgment in *Deepak Sibal's case* (supra) mainly relates to distinction between Government and non-Government employees. Their Lordships of the Supreme Court held that there was no rational justification for excluding non-Government employees from undertaking a study of Law Course in the Evening Classes. None of these judgments is of any help to the cases of the petitioners. Rather, as observed earlier, *Nidamarti Maheshkumar's case* (supra) and even *Heramba Kumar Sanna's case* (supra) support the reservation or preference to the candidates who have studied in schools/colleges within a particular region. Thus, I am in agreement with brother N.K. Kapoor, J. that the condition of eligibility incorporated in the 1994 prospectus issued by respondent No. 2 does not suffer from any constitutional infirmity.

75. The second point on which brother A.L. Bahri, J. and brother N.K. Kapoor, J. have disagreed relates to the validity of the corrigendum issued by the respondent - University. The corrigendum issued by the University reads as under:-

"MAHARSHI DAYANAND UNIVERSITY, ROHTAK CORRIGENDUM

It is notified for information of all concerned that the children/ward (if parents are not living)/dependents of persons belonging to Haryana, who have studied 10th, 10 + 1 and 10 + 2 classes as regular candidates in recognised institutions in Chandigarh will also be eligible, being capital of Haryana, subject to fulfilment of other eligibility conditions, to appear in the Entrance Examination for the purpose of admission to MBBS/BDS courses in the Institutions in the State of Haryana. Such candidates will also have to submit besides other certificates, certificate of Haryana resident/domicile as per State Govt. rules, along with an affidavit duly sworn before a 1st Class Magistrate by the parent/guardian of the candidate to the effect that his said son/daughter/ward (if parents are not living)/dependent has not appeared/is not appearing in the Entrance Test of any State/UT, other than those of Haryana and those institutions for which entrance Test is conducted on All India basis, for the purpose of admission to MBBS/BDS courses during the current years/session.

The last date for submission of application form has been extended to 27.6.1994. The Entrance Test will be held as per schedule on 9.7.1994.

REGISTER"

What has been done by this corrigendum is to make those students eligible for entrance test who have studied in 10th + 1 and 10 + 2 classes as regular students in recognised institutions at Chandigarh. This is, of course, subject to their fulfilling other conditions of eligibility. In addition to other conditions, the corrigendum imposes a restriction on the candidates passing examinations from Chandigarh inasmuch as it requires that the candidate should file an affidavit duly sworn before a 1st Class Magistrate by the parent/guardian of the candidate to the effect that his said son/ward (if parents are not living)/dependent is not appearing in an entrance test of any State/UT other than that of Haryana and those institutions for which entrance test is conducted on all-India basis for the purpose of admission to MBBS/BDS courses during the current year/session. This restriction is not to be found in the original prospectus. The learned counsel for the petitioners have assailed this restriction by arguing that once the candidates who have studied in Chandigarh have been made eligible on the ground that Chandigarh happens to be the capital of Haryana, there remains no reason or rhyme in restricting their choice of admission to a college within the State of Haryana and on the basis of their merit in the All India test. They argued that by imposing this restriction an arbitrary classification has been made between the students who have studied 10th, 10 + 1 and 10 + 2 classes in institutions recognised in Haryana on the one hand and those who have studied at Chandigarh. Argument of the learned counsel for the respondent University is that the restriction imposed by the University is a reasonable one as it is intended to restrict the choice of the candidates to the State of Haryana.

76. After having given my most anxious consideration to the rival submissions, I

find no force in the argument of the learned counsel appearing for the University. When candidates who have studied at Chandigarh have been placed at par with the students who have studied in Haryana, it will be deemed that all the students have been put in one pool for the purpose of appearing in the entrance test. The corrigendum virtually obliterates the distinction between the students who have studied in the institutions recognised in Haryana and those who have studied at Chandigarh. This being the position, the restriction imposed on the students who have studied in the 10th, 10 + 1 and 10 + 2 classes at Chandigarh cannot in any manner be justified when no such restriction has been imposed on the student who have studied in 10th, 10 + 1 and 10 + 2 classes in the institutions recognised in Haryana. By placing this restriction, an arbitrary and unreasonable classification has been made by respondent No. 2. Moreover, this restriction does not have any reasonable relation with the object to be achieved. The argument of Shri Aggarwal that this restriction is intended to restrict the choice of the candidates has no merit because he has not been able to explain as to why such restriction has not been imposed on the students who have studied in Haryana. Even otherwise, looking to the peculiar situation obtaining qua the students of Chandigarh - a city, which is the capital of two States and is also a Union Territory - the impugned restriction cannot but be termed as wholly arbitrary and unconstitutional.

77. Though some of the learned counsel argued that the distinction made between the employees of the Government of Haryana and members of I.A.S. on the one hand and private employees working in Haryana on the other hand is arbitrary, I am of the view that this is not a question on which brother A.L. Bahri, J. and brother N.K. Kapoor, J. have expressed any opinion and, therefore, no decision is called for on this question. Observations made by brother A.L. Bahri, J. on the basis of judgment of the Supreme Court in Deepak Sibal's case (supra) in the context of the corrigendum cannot be made basis for declaring that the Government has made arbitrary classification between the employees of the Government of Haryana and members of I.A.S. belonging to Haryana cadre who are serving outside the State on the one hand and private employees belonging to Haryana who are serving elsewhere on the other hand.

Although even on the third issue, counsel for the parties have advanced arguments, I do not find any justification for making any adjudication by me because both brother A.L. Bahri, J. and brother N.K. Kapoor, J. have expressed concurrent views.

78. In the result, I agree with brother N.K. Kapoor, J. that the condition of eligibility contained in the prospectus of 1994, namely, that the candidates should have studied 10th, 10 + 1 and 10 + 2 classes as regular candidates in the recognised institutions in Haryana is constitutionally valid. The same is, therefore, upheld. However, the following clause of the corrigendum is held to be arbitrary and violative of Article 14 of the Constitution and is therefore struck down:-

"Such candidates will also have to submit besides other certificates, certificate of Haryana resident/domicile as per State Govt. rules, along with an affidavit duly sworn before the 1st Class Magistrate by the parent/guardian of the candidate to the effect that his said son/daughter/ward (if parents are not living)/dependent has not appeared/is not appearing in the Entrance test of any State/UT other than those of Haryana and those institutions for which Entrance test is conducted on All India Basis, for the purpose of admission to MBBS/BDS courses during the current year/session."

The respondent-University is directed not to insist on compliance of this portion of the corrigendum. The writ petitions are disposed of in the manner indicated above.

It is hoped that the University will declare the result of the test at the earliest so that the future of the candidates may not suffer adversely.