
(1982) 04 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5687 of 1981 and Civil Miscellaneous No's. 408, 409, 668, 712, 755, 756 and 762 of 1982

Savita

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 29-04-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1
Constitution of India, 1950 — Article 14, 15, 15(4), 225, 226

Citation : AIR 1983 P&H 262

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Judgement

1. Maharshi Dayanand University, Rohtak (hereinafter referred to as the respondent University) started from academic year 1981-82 a new course of Bachelor of Dental Surgery (hereinafter referred to as B. D. S. course) and issued a prospectus giving the necessary details, inter alia regarding the candidates, number of seats and the mode and manner of selection.

2. The petitioner Miss Savita, as one of the eligible candidates, applied and appeared for the competitive test meant for selection of candidates for the said course. The result of the said competitive test was declared, vide respondent University's letter dated 10-9-1981, Annexure 1 to the writ petition. On 21-9-1981, the final list of selected candidates for the said course was released and the selected candidates were asked to deposit fee etc. and complete other formalities by 30-9-1981 and the classes allegedly started from 15-10-1981. As per the prospectus, the total number of seats for admission was fixed at 20. Out of these 4 sets were reserved for the nominees of the Haryana Government and the balance 16 seats were open to the bona fide residents of the State of Haryana and these were distributed in the following manner:

"(A) Reserved Seat

Categories No of seats

(a) Scheduled Castes/Tribes 4

(b) Backward Classes 2

(B) Open Merit Seats 10. Competition for reserved seats will be among the candidates belonging to the categories for which the seats have been reserved. Reserved seats remaining vacant on account of non-availability of eligible candidates would be placed under "Open Merit" Seats."

The number of seats were later on increased to 26, as per letters dated 4-9-1981 and 18-9-1981 respectively of the Health Commissioner to the Government of Haryana, Annexures I and III to the writ petition. Categorywise distribution of the total 26 seats was ordained in the following manner :--

(a) Scheduled Castes/Tribes 5

(b) Backward Classes 2

(c) Haryana Govt. Nominees 6

(d) Open Merit Seats 13 According to the petitioner, in fact, instead of 6, 7 seats were prescribed for the Haryana Government nominees by taking away one seat from the Open merit seats. No candidate from the Scheduled Castes/Tribes category is said to have appeared in the competitive test.

3. The petitioner in the Open merit seats category figured at Serial No. 20. She was denied admission. She moved civil Writ No. 7355 of 1981 in the Supreme Court challenging therein, inter alia, the reduction of Open Merit Seats by not including therein all the unfilled reserved seats for Scheduled castes Tribes category. That petition was dismissed in limine by their Lordships vide order dated 20-11-1981, Annexure V to the petition. Thereafter, the petitioner filed a civil suit in the civil Court. Considering, however, the said remedy as inefficacious, the petitioner filed the present writ petition in this Court on 18-12-1981, on the identical grounds.

4. The petitioner was permitted provisional admission, vide order dated 4-1-1982, of course subject to decision of this petition.

5. During the pendency of her writ petition, 8 candidates, namely, Jai Singh, Miss Parveen Kaur and Miss Meena Chhibber, Miss Anuradha, Miss Shashi Bala, Mukesh Mohan Suri and Satish Kumar Solanki filed civil Misc. Applications Nos. 408 409 (filed jointly by Miss Parveen Kaur and Miss Sumeera Chhabra), 668, 712, 756, 762 and 755 of 1982 on 20-2-1982, 20-2-1982, and 27-3-1982 respectively and were permitted to become petitioners in the main writ petition filed by Miss Savita and were also permitted provisional admission, vide orders dated 23-2-1982, 23-3-1982, 30-3-1982 and 29-3-1982 respectively.

6. Miss Savita petitioner in the main writ petition alleges that on 8-12-1981 Miss Kasturi Mohan, a candidate to Serial No. 8 in the merit list, having secured admission to M. B. B. S. course, vacated her B. D. S. seat and that the candidate

of Bhajan Lal, a candidate at serial No. 17 in the merit list, was also cancelled on 12-12-1981, with the result that her effective position on the merit list improved from Serial No. 20 to serial No. 18. Since all the 5 Seats reserved for Scheduled Castes/Tribes remained unfilled and as per the prospectus in that eventuality, these were to be included amongst the Open Merit category, the Open Merit Seats of the Scheduled Castes/Tribes were to increase from 13 to 18. If the instructions contained in the prospectus had been acted upon, then the petitioner, being at Serial No. 18 on the merit list, was entitled to be given admission. She was, however, denied admission as one of the Scheduled Castes/Tribes seats was utilised for increasing the category of Haryana Government nominees from 6 to 7 which was clearly against the instructions contained in the prospectus.

7. The petitioner further maintained that the reservation of 7 seats for the Haryana Government nominee was totally arbitrary and unjust; that the said classification of nominees had no reasonable nexus to the object sought to be achieved; that the said classification was irrational and based on no valid criterion nor any guidelines had been prescribed for selection of the nominees of the Haryana Government who had been exempted even from taking the competitive test, whereas even the reserved categories like Scheduled Castes/Tribes and Backward Classes had to take the entrance test; and that the nomination of the candidates depended purely on the whims and Fancies of the Government, which was in total violation of the provisions of Art. 14 of the Constitution of nominees did not satisfy the twin-test of nominees did not satisfy the twin-test of permissible classification under Art. 14 of the Constitution that is, there is (i) neither intelligible differentia, (ii) nor a rational nexus to the object sought to be achieved by way of creating the departure from the normal; and that but for the said reservation for nominees, 24 seats would have been available in the Open Merit category.

8. To the writ petition, three separate written statement have been filed by way of reply--one behalf of respondent No. 2, the other on behalf of respondents 1 and 3, and the third one on behalf of respondents 4 to 9 the candidates who were allegedly nominated by the Haryana Government for the said course. The respondents Nos. 1 and 2 have also contested the Civil Misc. Applications Nos. 408/409 of 1982.

9. The respondents have pressed two of the preliminary objections:--

(1) that the writ petition of Miss Savita and intervener petitioner Miss Parveen Kaur were barred by res judicata as earlier petitions filed by them in the Supreme Court had been dismissed, and

(2) that the petition and the miscellaneous applications of the interveners-petitioners suffered from laches.

On merits, it was averred that the course started from 24-9-1981 and not from 15-10-1981, as alleged it was admitted that the Government had reserved 4

seats for its nominees out of 20 seats initially, vide letter No. 38/402/79-IHBI, dated 29-6-1981, and letter No. 38/402/79-IHBI. Dated 31-7-1981. Annexure R. 5 and R. 6 to the return filed on behalf of respondents 1 and 3 respectively and thereafter the Haryana Government increased the number of seats from 20 to 25, vide its letter No. 38/402/79-IHBI, dated 4-9-1981, Annexure R 7 to the return, that on 18-9-1981, the government increased one more seat for the B. D. S. course and nominated a candidate against the seat, as per Annexure R.8, thus, increasing the total number of seats to 26.

10. It was next averred that, in fact, 7 seats were reserved for the Haryana, Government nominees, that the Government had earlier taken away one seat from the Backward Class category and nominated one candidate against that seat, that later on the two seats for Backward classes were completed by taking away one seat from Scheduled Castes/Tribes category thus reducing the number of seats of Scheduled Castes/Tribes category from 5 to 4, vide Government letter No. 32/402.81 INBI, dated 18-12-1981, Annexure R. 9, that since all the 4 seats of Scheduled Castes/Tribes remained unfilled these were thrown open to the Open Merit Seats thus increasing their number from 13 to 17.

11. Before proceeding with the consideration of rival contentions pertaining to the merits of the petition, it would be in the fitness of things to dispose of the two preliminary objections canvassed on behalf of the respondents.

12. Mr. Harbhagwan Singh, Advocate General, Haryana, argued that the present petition filed by Miss Savita (Civil Writ No. 5687 of 1981) filed by Miss Parveen Kaur whose civil writ petitions Nos. 7355 and 7415 of 1981 fled in the Supreme Court had been dismissed vide order dated 20-11-1981, are barred by principle of res judicata, It was also urged, that petition of intervener Miss Sumeera Chhabra whose Civil Writ Petition No. 7622 of 1981 was dismissed as withdrawn, is also barred by the principles of res judicata.

13. The High Court and the Supreme Court have extended to the writ proceedings and the orders passed therein the general principles of res judicata contained in Section 11 of the Civil P. C. The Constitution Bench of the Supreme Court authoritatively formulated its views in this regard in Daryao and Others Vs. The State of U.P. and Others, . The facts in that case were that the High Court had dismissed the writ petition without passing a speaking order. The very matter then was taken to the Supreme Court in writ jurisdiction under Article 32 of the Constitution of India. It was urged that the writ petition in the Supreme Court was barred by the principle of res judicata as an identical writ petition had been dismissed by the High Court, that the petitioner could not avail the same order of the High Court could have been challenged in the Supreme Court only by way of appeal and not otherwise. Their Lordships held that a decision on merit by the High Court of a writ petition would create a bar of res judicata for a second writ petition in the Supreme Court. Their Lordships, however, expressly held that a dismissal of writ petition by the High Court without a speaking order did not create a bar of res judicata and a second writ petition. Was competent on

the same grounds. This view was reiterated by their Lordships in a subsequent decision in *Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat)*, .

14. Their Lordships, however, in *Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another*, (hereinafter referred to as the *Workmen's case*), appeared to slightly deviate from the above view, as will be clear from the following observations (at page 1288) appearing therein:

"Similarly even if one writ petition is dismissed in limine by a non-speaking order word "dismissed", another writ petition would not be maintainable because even the one word order, as we have indicated above, must necessarily be taken to have decided impliedly that the case is not a fit one for exercise of the writ jurisdiction of the High Court. Another writ petition from the same order or decision will not lie."

Their Lordships, however, proceeded to hold that a non-speaking order passed in the writ jurisdiction could not necessarily be held to have decided, even impliedly, the petition on merit and hence any other remedy of suit or other proceeding would not be barred on the principle of *res judicata*.

15. The deviation pointed out above from *Daryao and Others Vs. The State of U.P. and Others*, is in a judgment rendered by a Bench of lesser strength and if this decision had been given without noting *Daryao's case (supra)*, then possibility it would have been open to this Court to feel bound only by the decision of the larger Bench and apply the ratio thereof rather than that of a decision of a Bench of lesser strength, but in *Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another*, , their Lordships had taken due notice of *Daryao's case (supra)*, Despite that fact, their Lordships had felt impelled to observe as follows at the fag-end of para 10 of their judgment (at p. 1288):

"We have though it proper to elucidate this aspect of the matter a bit further to indicate that dismissal of a writ petition in limine by a non-speaking order could certainly create a bar in the entertainment of another writ petition filed by the same party on the same cause of action."

On behalf of the petitioner, however, reliance is placed on a later decision of the Supreme Court rendered in *Hoshnak Singh v. Union of India* : AIR 1979 SC 1328, and pointed attention was drawn to the following observations of Desai, J. who delivered the opinion for the Bench (at. p. 1333):

"It is, therefore, incontrovertible that where a petition under Art. 226 is dismissed in limine without a speaking order such a dismissal would not constitute a bar of *res judicata* to a subsequent petition on the same cause of action; more so, when on the facts in this case it appears that the petition was dismissed, presumably because the petitioner had an alternative remedy by way of a revision petition under S. 33 of the 1954 Act which remedy he availed he moved the High Court again for the relief....." The decision in *Hoshnak Singh's*

case (supra) was rendered by a Bench of two Judges and the earlier decision, rendered in *Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another*, which was decided by a Bench of three Judges, had not been taken note of therein. Hence, even though the decision in *Hoshnak Singh's* case (supra) is alter decision, yet this Court is bound by the ratio of the decision in *Workmen's* case (supra), which is a decision by a larger Bench.

16. A Full Bench of five Judges of this Court in *Teja Singh v. Union Territory of Chandigarh*, (1982) 84 Pun LR 160: (AIR 1982 Punj & Har 169), after an exhaustive review of various decisions on the point, followed the ratio of *Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another*, as would be clear from proposition No. 7 enunciated in para 27 of the judgment, which reads :

"That a second petition on similar facts and in respect of the same cause of action by the same party would not be maintainable even if his earlier petition had been disposed of by one word order "dismissed"."

Earlier thereto, a Full Bench of three Judges of this Court in *Bansi and Another Vs. Additional Director, Consolidation of Holdings and Others*, , held that when a petition under Art. 226 of the Constitution had been dismissed in limine, it could not again be revived by the same petitioner by another petition in which substantially the same allegations were made again. The ratio of *Daryao and Others Vs. The State of U.P. and Others*, was explained by the Full Bench in *Bansi's* Case (supra) by observing that (at. p. 30)

"In *Daryao's* case it was made clear that the conclusion reached was confined only to *res judicata* and to no other. But so far as the maintainability of the second writ petition in High Court after the dismissal in limine of the earlier writ petition on the same facts was concerned, there was, apart from *res judicata*, another important aspect, which was the finality attaching to the judgment and order made by a Court vis-a-vis the maintainability of a subsequent petition containing the same allegations as were made in the earlier petition."

This Court further held in *Bansi's* case (supra) that,

"To entertain the second petition on the same grounds would amount to by-passing the recognised legal procedures for setting aside such orders, such as through review petitions or by filing an appeal ended the discussion with the following observations :

"Such a course would also be wrong not only on principle but also on grounds of propriety and public policy which, subject to the well recognised exceptions, require finality of judicial proceedings so far as the same Court is concerned."

In view of the decision in *Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another*, and the authoritative view expressed by this Court through the aforementioned two Full Benches, I cannot but hold hat such writ petitions in this Court as are based on the same cause of action as was in

issue before the Supreme Court in their earlier writ petitions, the same would be barred by the principles of *res judicata*.

17. On behalf of the petitioner, however, attention was drawn to the following passage from the *Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another*, in order to build an argument that same cause of action could not be raked up in the same Court, however, it could be done in other proceedings. The learned counsel sought to project writ proceedings in the High Court as different proceedings from the ones under Art. 32 of the Constitution in the Supreme Court (at. p. 1288):

"But the position is substantially different when a writ petition is dismissed either at the threshold or after contest without expressing any opinion on the merit of the matter, then no merit can be deemed to have been necessarily and impliedly decided and any other remedy of suit or other proceeding will not be barred on the principle of *res judicata*."

In my opinion, there is no merit in the contention advanced on behalf of the petitioner. The writ jurisdiction of the High Court and the one under Art. 32 of the Constitution in the Supreme Court are writ jurisdiction of the two Courts and are identical. That is why, a decision on merits by the High Court of a writ petition creates a bar for a writ petition under Art. 32 in the Supreme Court on the similar case of the High Court are subject to the appellate jurisdiction of the Supreme Court against the speaking order of the High Court in a writ petition is held not to be entertainable on the ground that the two jurisdictions are invoked through a writ petition and, therefore, both the jurisdictions are identical with the difference that while a right asserted through a writ petition under Art. 32 of the Constitution has to be solely based on Fundamental Rights, the right asserted in the High Court through a writ petition under Art. 226 of the Constitution is not so limited to only Fundamental Rights and can be broad-based as envisaged under the said article. That means, if a right asserted is solely based on Fundamental Rights, then the two jurisdictions--one under Art. 32 in the Supreme Court and the other under Art. 226 in the High Court--would be absolutely identical and a matter dismissed by the Supreme Court in its writ jurisdiction, whether by a speaking order or by a non-speaking order, would constitute a bar of *res judicata* for a second writ petition in the High Court.

18. In the present case, the petitioners assert a right based on clause (2) of Art. 29 and Art. 14 of the Constitution which fall in Part III of the Constitution enumerating Fundamental Rights.

19. On behalf of the petitioner Miss Savita, it has been contended that her case is distinguishable in that her petition dealt with a cause of action that had accrued to her after the dismissal in limine of her petition in the Supreme Court on 20-11-1981 in that the admission of two candidates at Serial Nos. 8 and 17 of the merit list had been cancelled on 12-12-1981, with the result that her position

had improved in the merit list from Serial No. 20 to Serial no. 18 and she having claimed that Open Merit seats ought to have been 16 as a result of the inclusion of 5 Scheduled Caste/Tribe's seats, that fact entitled her to get admission. Such a right, though urged before the Supreme Court, could have been of no avail at that time, because, even if their Lordships were to accept wholly the contention that 5 Scheduled Caste/Tribe category seats should have been added to Open merit Seats, it would not have helped the petitioner, as she stood at Serial No. 20 and, therefore, this could also have been one of the reasons for dismissing the petition by their Lordships, However, on 12-12-1981 the position entirely changed. At that stage, if her contention that Scheduled Caste/Tribe category seats should have been included in the Open Merit Seats was to be accepted, then she was entitled to the relief of admission from the Court.

20. In my opinion, there is merit in the contention advanced on behalf of the petitioner, Miss Savita, and I, therefore, hold that so far as her petition is concerned, the same is not barred by the principle of *res judicata*.

21. Petition of the intervener, Parveen Kaur, is, however, barred by the principle of *res judicata* and the same is hereby dismissed on that short ground alone.

22. As regards the petition of intervener Miss Sumeera Chhabra whose petition in the Supreme Court, had been dismissed as withdrawn, it has been urged on behalf of the respondent that her position too is barred in view of the Full Bench decision of this Court in *Teja Singh Vs. Union Territory of Chandigarh and Others*, and pointed attention in this regard is drawn to proposition No. 9 formulated in para 27 of the judgment, which reads :

"9. That provisions of O. 23, R. 1 of the Civil P. C. would apply to the writ proceedings and that a petition which has simply been got dismissed as withdrawn would be a bar to the filing of a second petition on the same facts and in respect of the same cause of action."

In my opinion, the ratio of the Full Bench decision in *Teja Singh's* case (*supra*) would not apply to the entertainability of writ petition on behalf of Sumeera Chhabra intervener petitioner. The ratio of the Full Bench applies to a writ petition filed in this Court and dismissed as withdrawn without permission to file a fresh petition. It would not apply to a petition dismissed as withdrawn by the Supreme Court--the reason being that the Full Bench formulated proposition No. 9 in view of the further finding that the High Court has power under Art. 225 of the Constitution to frame Writ Rules and by Rule 32 thereof, it had incorporated all the provisions of the Civil P. C. in the said Rules.

23. It has not been charged on behalf of the respondents" that the Supreme Court writ Rules contained either an express provision, which is *pari materia* with the provisions of O. 23, R. 1, civil P. C. or through a rule like Rule 32 aforesaid of this Court had incorporated the said provision of the Civil P. C. in its Writ Rules.

24. In view of the above, the ratio of the Full Bench in *Teja Singh Vs. Union*

Territory of Chandigarh and Others, cannot bar a second writ petition in this Court merely on the ground that an identical petition by the same party canvassing the same cause of action had been dismissed as withdrawn from the Supreme Court.

25. Now coming to the second preliminary objection that the main writ petition, as also the miscellaneous applications of the interveners-petitioners, suffered from laches, it may be observed that in a matter pertaining to admission to educational institutions, the rules and regulations of the University prescribing the eligibility, qualifications for taking the examination, say the percentage of attendance of lectures etc. would have a bearing on the consideration as to whether the petitioner had disentitled himself on account of laches to a relief of admission or not. therefore, only such decisions in this regard, whether of High Court or of the Supreme Court, as dealt with the admission to the educational institutions. Particularly technical institutions like medical Colleges or Engineering Colleges, would alone furnish a meaningful guide in this regard.

26. On behalf of the respondents, attention of this Court is drawn to the following observations made in Shri Ramesh Kumar and Others Vs. Technological Institute of Textiles and Others, :--

"The petitioners have invoked the writ jurisdiction of this Court within about two months of the impugned admission and the gap represents a very reasonable time of the petitioners to take action at law. We may make it clear, delayed the institution of their petitions by, say, four months or so, we would not have entertained them by reason of delay alone, in the fact and circumstances of the case."

This was a case which pertained to the admission in the Technological Institute of Textile, Bhiwani.

27. Attention was also drawn by the counsel for the respondents to the following observations of their Lordships in an unreported decision in Civil Writ No. 3293 of 1981(Mohinder Kumar Garg v. Maharshi Dayanand University, Rohtak) decided on 10-1-1981 in regard to admission to M.B.B.S. course in the academic year 1981-82 :--

"We would like to make it clear that no more petitions will be entertained in respect of that question since especially any writ petitions which will be filed hereinafter either in this Court or in the High Court seeking admission to the 1981-82 term will suffer from delay, the term having already commenced from August 1981."

28. It may be observed that a Division bench of this Court dismissed, on the ground of laches, the writ petition, vide order dt. 29th March, 1982, rendered in Civil Writ No. 1437 of 1982 of candidates, who claimed that in order of merit they were higher than some of the candidates for admission to M.B.B.S. course for the academic year 1981-82, who were given admission by their Lordships of

the Supreme Court, vide order dt. 10-11-1981, rendered in Civil Writ No. 3293 of 1981. This Court dismissed the writ petition because of the observations of their Lordships extracted above.

29. Following the above Division Bench decision dt. 29-3-1982, I dismissed the Civil Misc. Applications Nos. 780, 785, 787, 788 and 806 of 1982 in Civil Writ No. 5687 of 1981, filed in this Court, first four of them, on 30-3-1982 and the last one on 1-4-1982 by order dt. 1-4-1982, on the ground of laches, even though it was asserted on their behalf that they, in the merit list for admission to B.D.S. course for the academic year 1981-82 were higher than some of the interveners, who were allowed provisional admission and permitted to be petitioners to the present writ petition filed by Miss Savita.

30. Dr. A. K. Kapur appealing for some of the petitioners drew attention to the order dt. 3-5-1981 of the Supreme Court in petitions for special leave to appeal No. 3888, 3896, 3945 and 3855 of 1980, whereby admission was sought in the session stated from 1-8-1980 in M.B.B.S. course in Medical College, Rohtak. Provisional admission was directed to be given by their lordships as late as 5-1-1981 to Kumud Aggarwal, daughter of Doota Ram and to Kulwinder Singh son of S. S. Bahal, on 2-2-1981, and urged that even if the classes for B.D.S. course are taken to have started from 24-9-1981 of the academic session 1981-82, neither the main petition nor those of the miscellaneous applications of the interveners can be said to suffer from laches.

31. In view of their Lordships' decision in granting provisional admission to M.B.B.S. Course as 2-2-1981 to a course started from 1-8-1980, it may be observed that the main writ petition (Civil writ No. 5687 of 1981), as also the miscellaneous application Nos. 408, 409, 668, 712, 756, 762 and 755 of 1982 of the interveners, who had filed their applications up to 29-3-1982 and had been granted provisional admission by order dt. 30-3-1982, shall have to be considered as not suffering from undue laches.

32. It may be argued that such view would run inconsistent from the Division Bench order dt. 20-3-82 dismissing on the ground of laches, petition for admission to M.B.B.S. course, which was filed on 24-8-92. But in this regard one cannot lose sight of the fact that in regard to M.B.B.S. course regarding session 1981-82, there were express directions of their Lordships not to entertain any more petitions after that order was rendered and, therefore, there was no option but to follow that direction contained in the said order.

33. For the reasons aforementioned, I hold that the main petition, as also the miscellaneous applications of the interveners-petitioners, cannot be considered to be suffering from undue laches.

34. Now coming to the merits of the case, it may be observed that the petitioners were candidates for admission against Open Merit seats. It is also not dispute that if reservation of seats for Haryana Government nominees is held to be illegal, then those seats could be available to candidates applying for

admission against Open Merit Seats. So the primary question that falls for determination is as to whether or not the reservation of 7 sets, or any lesser number of seats, for Government nominees is valid.

35. Provisions of clause (2) of Art. 29, read with Art. 15(4) and Art. 14 of the Constitution would show that excepting to the extent provided by Art. 15(4) of the Constitution and a valid classification made on the basis of intelligible differentia having a rational nexus to the objects sought to be achieved as a result of such classification, a candidate, along with other candidates similarly situate, would be entitled to be considered for admission to a given course of studies imparted in a Government-run institution or an institution receiving aid out of State funds, subject to the criteria validly laid for eligibility by a competent authority.

36. Admittedly, reservation of seats for Government nominees does not fall in the category of the kind of reservation permitted by Clause (4) of Art. 15 of the Constitution,. hence, reservation of seats for Government nominees shall be illegal and invalid unless it is shown that the Government nominees by virtue of an intelligible differentia having rational nexus to the object to be achieved formed a class distinct from other candidates applying for admission to the course of studies in question.

37. On behalf of the respondents, attention was drawn to the observations contained in para 40 of the Supreme Court judgment rendered in State of Uttar Pradesh and Others Vs. Pradip Tandon and Others, , in support of their submission that a provision laying down a source is not reservation. para 40 is in the following terms:

"40. In Civil Appeal No. 1385 of 1973 two other minor contentions were raised. One was that the reservation was beyond 50 per cent. The total number of seats to be filled in through the combined test is 732. The number of general sets is 368., 26 seats are reserved for Government of India nominees under various heads. The reservation of 26 seats was contended to be considered while calculating the percentage of reserved seats. If 26 seats are included it was said that the reserved seat form a source from which selection is made. The Government bears provision laying down a source is not preservation (See D.N. Chanchala Ors. Vs. The State of Mysore and Others, ." The aforementioned observations relied upon by the respondents are of no avail to them, for in that case the question for consideration before their Lordships was as to whether 26 seats, that were to be nominated by the Government, were considered to be as reserved seats for the purpose of seeing as to whether total number of reserved seats exceeded or not the permissible reservations quota of seats. In the context, their Lordships held that 26 seats filled up as a result of the nomination by the Government could not be considered as part of reservation, as, according to them, such a provision only indicted a source from which 26 candidates were to be nominated.

38. It was then contended on behalf of the respondents that the Government bearing the financial burden of running the Government college was entitled to select the sources, from which admission would be made, and pointed attention in support of the above proposition was drawn to the following observations of the Supreme Court in *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, -

"Further, the Government which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission in its own college and to decide the sources from which admission would be made, provided of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. So long as there is no discrimination within each of such sources, the validity of the rules lying down such sources cannot be successfully challenged."

It was also submitted on behalf of the respondents that since the petitioners had not applied for admission against seats meant for Government nominees, so they had no locus standi urge that seats for Government nominees were not validly reserved. In support of their submission, reliance was placed on the following observations of the Supreme Court India *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, :

"The other question which was canvassed before the High Court and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to challenge the nominations made by the Central Government. They do not compete for the reserved seats and have no locus standi in the matter of nomination to such seats."

39. Coming to the first submission. It may be observed that the learned counsel for the respondent is mistaking the source to the mode and manner of drawing upon the source. In *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, Rule 4 of the Mysore Medical Colleges (Selection or Admission) Rules, 1970, envisages filling of 60 seats by students from the Union Territories and States where there were no medical college, students from relatively less developed Commonwealth countries, cultural scholars and students under T.C.S. of the Colombo Plan and special commonwealth Assistance Plan, students from Nepal, repatriates from Burma, Ceylon, Mozambique, children of Defence personnel have passed L.A.M.S. and L.U.W.S. lady students taking family planning programme, children of political programme, children of political sufferers and lastly, students from Goa, As would be clear, under Rule 4 *ibid* the Government indicated various sources. In that case, the mode and manner of drawing upon that source was not under challenge. What was under challenge was that seats reserved for the said source constituted a reserved category and, therefore, after adding these seats to other reserved quota seats, the quota of reserved seats exceeded the permissible limit. Their Lordships observed that a provision laying down such source is, strictly speaking, not a reservation. It is not a reservation as understood by Art. 15 of the constitution against which objection can be taken on

the ground that it is excessive. The reservation as contemplated by Art. 15 is the one which is made under rule 5 thereof. In that case, their Lordships held that each of the sources indicated by Rule 4 constituted valid and distinct class.

40. In *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, the sources that were sought to be drawn, upon for admission to Maulana Azad Medical College, Delhi were (a) residents of Delhi, (b)(i) sons/daughters of Central Government servants posted in Delhi at the time of the admission, (i) candidate whose father is dead and is wholly dependent upon brother/sister who is a Central Government servant posted in Delhi at the time of the admission, (e) Delhi at the time of the admission, (c) sons/daughters of residents of Union Territories specified below including displaced persons registered therein and sponsored by their respective Administration of Territory--(i) Himachal Pradesh, (ii) Tripura (iii) Manipur (iv) Naga Hills (v) N. E. F. A. (vi) Andaman; (d) sons/daughters of Central Government servants posted in Indian Missions abroad, (e) Cultural Scholars, (f) Colombo Plan Scholars, (g) Thailand Scholars, and (h) Jammu and Kashmir State scholars. 23 seats were reserved for the candidates hailing from the aforesaid sources (e to h). Two contentions were raised before their Lordships (I) that the provision for reservation of seats was unconstitutional, and (II) that the nominations from such reservations itself had been made contrary to the rules. Elaborating the first contention before their Lordships, it was urged that the reservation of seats for admission to the medical college was not based on any reasonable classification and suffered from the vice of discrimination, as such reservation was hit by Art. 14 read with cls. (1) and (4) of Art. 15 and clause (2) of Art. 290 of the Constitution. It was further argued that the system of nomination being made by the Government and not by the Admission committee was per se discriminatory. Taking each source individually, their Lordships held that the same were based on intelligible differentia which had nexus to the objects sought to be achieved. It was further observed that the object of selection for admission was no doubt to secure the best possible material which should surely be achieved by making proper rules in the matter of selection, but their Lordships hastened to add that there could be no doubt that such selection had to be confined to the sources that were indicated to supply the material. If the sources had been classified in the manner done, in that case it was difficult to see how that classification had, no rational nexus with the object of imparting medical education and also of election for the purpose. Regarding the objections to the picking out of the candidates from such sources by nomination by the Government had to reservation in question could not be considered to be given preferential treatment of any kind, as the candidates for the reserved seats had to be drawn from different sources, which would have been difficult to have unity in matter of selection from amongst them, because the standards of the examinations passed by them, the subjects studied by them and the educational background of each of them would be different and divergent and therefore, the central Government was the appropriate authority which could make a proper selection out of this category,

more so when it was done with the tacit approval and consent of the Medical Course Admission Committee.

41. It may be observed that no source had been indicated by the respondents and, therefore, one cannot judge whether the source indicated for which nomination has been made is based upon intelligible differentia and had a rational nexus with the object sought to be achieved. The 7 candidates that have been nominated by the Government, or by the authority nominated by the Haryana Government, for the said purpose, have been nominated arbitrarily and capriciously by merely picking upon a candidate who took their fancy for whatever reasons.

42. The prospectus was issued on 10-8-1981, as stated, at the bar and not controverted by the respondents. Chapter 3 of the prospectus providing for number of seats and reserving 4 seats for the nominees of the Haryana Government also carried a note which reads:

"Note: For the seats reserved for the nominees of the Government of Haryana the eligible candidates should submit their applications to the authority nominated by the Government of Haryana. The names suggested by the abovesaid authority will be submitted to the Registrar, M. D. University Rohtak, who shall admit them after verifying necessary particulars."

In view of the aforesaid note, the candidates eligible and who were desirous of being nominated for admission by the Government of Haryana could apply only on the date or thereafter on which the said prospectus was published by the respondent University, but the authority nominated by the Government of Haryana for the purpose had already nominated the candidates before the said prospectus was issued. Out of four nominees in question; Miss Ashu (respondent No. 5) and Arvin Kumar (respondent No. 4) were nominated on 29-7-1981 and Nitin Jain (respondent No. 6) and Harjeet Singh (respondent No. 9) on 31-7-1981.

43. In view of the above, I hold that nomination of the 7 candidates, that is, respondents Nos. 4 to 10, by the Haryana Government for admission to the B. D. S. course in question was done arbitrarily in violation of the principle of equality enshrined in Art. 14 of the Constitution.

44. As regards the locus standi of the petitioners to challenge the said nomination by the Haryana Government, it may be observed that the ratio of the observations relied upon from *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, on behalf of the respondents does not apply to the facts of the present case. In that case, the sources were held to be rightly classified and then it was held that since the petitioners therein did not fall in either of the sources so they had no locus standi to challenge the nomination of candidates from those sources. In the present case, no valid source is indicated, from which the Government could draw upon for nomination. What obtained there is mere nomination by the Haryana Government of a candidate arbitrarily and, therefore,

the nomination by the Haryana Government does not represent a source in the sense envisaged in Kumari Chitra Ghosh's case (supra), but mere arbitrarily picking out a candidate for admission, which is clearly violative of Article 14 of the Constitution and, therefore, liable to be challenged at the instance of the petitioners who have been discriminate against.

45. For the reasons aforementioned. I hold that the nomination of respondents 4 to 10 by the Haryana Government for admission to the B. D. S. course in question is illegal, with the result that the Open Merit Seats that were to be available to be filled up come to 24. Since, so far against those seats, only 15 candidates have been given admission, after excluding the two candidates at Serial Numbers 8 and 17, whose admissions had been cancelled; and one seat was offered to be given to Madan Lal Bansal by virtue of the order dated 1-4-1982 in C. W. P. 130 of 1982 who stood in the merit list at Serial No. 19, so 8 seats fell vacant against which 8 petitioners in the order of their inter se merit in the merit list are entitled, to be admitted to the B. D. S. course in question for the session 1981-82. These petitioners are :--

(1) Miss Savita, (2) Miss Sumeera, Chhabra, (3) Jai Singh, (4) Satish Kumar, Solanki, (5) Mukesh Mohan Suri (6) Miss Meena Chhibber, (7) Miss Shashi Bala, (8) Miss Anuradha Sharma.

Since these petitioners have already been given provisional admission, so they will be entitled to continue their course of studies in B. D. S. in question.

46. It was urged by Mr. Kuldip Singh on behalf of the candidates nominated for admission by the Haryana Government, that they having attended classes for almost for the whole term and having spent considerable money in prosecuting their studies justice should be tempered with mercy in their case and they be permitted to continue their studies.

47. On behalf of the respondent university and the Director-Principal of the Medical College, Rohtak, it was urged that it would not be possible to accommodate more students than already provided for, more so because it would be difficult to get sanction for the additional seats.

48. If the Haryana Government is able to satisfactorily meet the needs of the additional seats indicated hereinafter in the B. D. S. course and help the Medical College Authorities in securing the sanction for the additional seats from the concerned authority, then respondents 2 and 3 are directed to permit such additional candidates too to continue their studies. In the eventuality of the Haryana Government being able to help the respondent university and the Medical College to have additional seats, then they shall have to provide for one more additional seat in order to help the intervener-petitioner Miss Parveen Kaur, who has already secured admission to continue her studies. That means respondents Nos. 4 to 10 shall be entitled to continue their studies only if an additional seat for intervener petitioner Miss Parveen Kaur is also created and she too is enabled to continue her studies, because respondents Nos. 4 to 10

have no better right to continue their studies than the aforesaid intervener-petitioner who figures at Serial No. 21 in the merit list.

49. For the reasons aforesaid, the petitioner along with Civil Misc. Applications Nos. 408, 409(so far as it relates to Miss Sameera Chhabra), 668, 712, 756, 762 and 755 of 1982 are allowed with costs of which are assessed at Rs. 1,5000/- out of which Rs. 800/- shall be received by Miss Savita petitioner and the rest shall be shared equally by all the rest of the 7 interveners-petitioners except Miss Parveen Kaur. The costs to be borne by respondent No. 1, The petition on behalf of the intervener-petitioner Miss Parveen Kaur is dismissed subject to the directions given to respondents Nos. 2 and 3.

50. Order accordingly.