
(2019) 04 P&H CK 0132

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8234, 9565 Of 2019 (O&M)

Shrey Goel And Others

APPELLANT

Vs

Union Territory Of Chandigarh And Another

RESPONDENT

Date of Decision : 23-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 15, 15(1), 16(2)

Citation : (2019) 04 P&H CK 0132

Hon'ble Judges : Mahesh Grover, J;Lalit Batra, J

Bench : Division Bench

Advocate : Akshay Bhan, A.S.Talwar, Karan Vir Nanda, Pankaj Jain, Atul Lakhanpal, R.Kartikaye, Babli Kumari, M.K.Dogra, Sumesh Gupta

Final Decision : Disposed Off

Judgement

1. By this order we will dispose of two civil writ petitions bearing CWP Nos. 8234 and 9565 of 2019.

The petitioners, desirous of seeking admission to the M.D/M.S

courses find the following clause to be in breach of several pronouncements of Hon'ble Supreme Court of India as it tends to subvert merit by granting benefit to few by giving them preference in the matter of admission by giving primacy to their place of residence:-

"2. State Quota : 64 seats. In compliance of the decision of Hon'ble Punjab & Haryana High Court, distribution of 50% State Quota seats are as below:-

Category

Total no. of seats

Reserved (SC) 15%

General

1.

Institutional Preference Pool (IP)

32

5

27

2.

UT, Chandigarh Pool

32

5

27

Total

64

10

54

A. Institutional Preference Pool (IP): Candidates who have passed their MBBS examination from Govt. Medical College & Hospital Chandigarh B. UT Chandigarh Pool : Candidate who fulfill eligibility criteria as below: This category will include candidates with background of Chandigarh. To be eligible for this category candidate should fulfill any of the following criteria:-

i. Studied for a period of 5 years in Union Territory of Chandigarh at any time prior to the last date of the submission of the application.

ii. Candidates whose parents have resided in Union Territory of Chandigarh for a period of at least 5 years at any time prior to the last date of the submission of the application either in pursuit of a profession or holding of a job.

iii. Children of persons who have held/hold immovable property in Union Territory of Chandigarh for a period of five years at any time prior to the last date of the submission of the application. The property should be in the name of the parents or the candidate himself/herself.

Important Note:

a) To be eligible for UT Chandigarh Pool under B (i), the candidate must submit a certificate to the effect from Principal of School/College located within the territory of UT Chandigarh.

b) To be eligible under B (ii), the candidate should submit a certificate issued by the D.C of UT Chandigarh to the effect that the candidate or his parents have

been residing/ have resided in Chandigarh at least for 5 years.

c) To be eligible under B (iii), the candidate must submit a certificate issued by D.C-cum-Estate Officer/Tehsildar stating that the candidate/parents of the candidate have held/are holding immovable property in UT Chandigarh for at least for 5 years prior to the submission of application."

The short question that has been posed before us is whether the above extracted clause of the prospectus inasmuch as it gives primacy and emphasis to a person's residence and association with a city to grant a concession in merit, is in direct conflict with the various decisions of the Hon'ble Supreme Court such as Dr. Pradeep Jain etc. etc. vs. Union of India and others reported as 1984 AIR (SC) 1420 and Saurabh Chaudri and others vs. Union of India and others reported as (2003) 11 SCC 146, or not?

Both these above noted pronouncements took into account the earlier decision of the Hon'ble Supreme Court in Jagdish Saran's case and quoted in extenso the observations made by Hon'ble Mr. Justice Krishna Iyer in Dr. Pradeep Jain's case (supra) extracted herebelow:-

"22. So much for admission to the M.B.B.S. 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 post graduate courses, such as, M.D., M.S. 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 Jagdish Saran's case, and we wholly endorse what he has said:

"The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scale of speciality where the best skill or talent, must be handpicked by selecting according to capability. At the level of Ph. D., M.D., or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in the making is a national loss the considerations we have expended upon as important loss their potency. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk."

"If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social inconsequence, but more

at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise. In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless."

"Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for post graduate or post doctoral courses in specialised subjects. There is no substitute for sheer flair, for creative talent, for fine-tune performance at the difficult highest of some disciplines where the best alone is likely to blossom as the best. To sympathise mawkishly with the weaker sections by selecting substandard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists, not humdrum second-rates. So it is that relaxation on merit, by over ruling equality and quality all together, is a social risk where the stage is post graduate or post-doctoral."

These passages from the judgment of Krishna Iyer, J. clearly and forcibly express the same view which we have independently reached on our own and in deed that view has been so ably expressed in these passages that we do not think we can usefully add anything to what has already been said there. We may point out that the Indian Medical Council has also emphasized that playing with merit, so far as admissions to post graduate courses are concerned, for pampering local feeling, will boomerang. We may with advantage reproduce the recommendation of the Indian Medical Council on this point which may not be the last word in social wisdom but is certainly worthy of consideration:

"Student for post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for post-graduate studies should be conducted by the Universities."

The Medical Education Review Committee has also expressed the opinion that "all admissions to the post-graduate courses in any institution should be open to candidates on an all India basis and there should be no restriction regarding domicile in the State/UT in which the institution is located." So also in the policy statement filed by the learned Attorney General, the Government of India has categorically expressed the view that:

"So far as admissions to the institutions of post- graduate colleges and special professional colleges is concerned, it should be entirely on the basis of all India merit subject to constitutional reservations in favour of Scheduled Castes and Scheduled Tribes."

We are therefore of the view that so far as admissions to post-graduate courses, such as M.S., M.D. and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to post graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed M.B.B.S. course from a medical college or university may be given preference for admission to the post-graduate course in the same medical colleges or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the post- graduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admissions to the M.B.B.S. course. But, even in regard, to admissions to the post-graduate course, we would direct that so far as super specialities such as neuro- surgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all India basis.

23. What we have said above in regard to admissions to the M.B.B.S. and post-graduate courses must apply equally in relation to admissions to the B.D.S. and M.D.S. courses. So far as admissions to the B.D.S. and M.D.S. courses are concerned, it will be the Indian Dental Council which is the statutory body of dental practitioners, which will have to carry out the directions given by us to the Indian Medical Council in regard to admissions to M.B.B.S. and post- graduate courses. The directions given by us to the Indian Medical Council may therefore be read as applicable mutatis mutandis to the Indian Dental Council so far as admissions to BDS and MDS courses are concerned."

The questions posed in Saurabh Chaudri's case were sculled out in para 2 are extracted herebelow:-

"2. The core question involved in these writ petitions and appeal centres around the constitutional validity of reservation whether based on domicile or institution in the matter of admission into postgraduate courses in government-run medical colleges."

The observations relevant for our purposes wherein the Saurabh Chaudri's case need to be set out hereinbelow:-

"26. It is neither in doubt nor in dispute that before the scheme was evolved in Dr. Pradeep Jain's case (supra), notices had been issued to all the States and all of them were fully heard. But despite the same, the orders passed by this Court in Dr. Pradeep Jain's case (supra) had been flouted with impunity, inter alia, by the States of Assam, Karnataka, Goa and Tamil Nadu. Now it transpires that even the State of Punjab has also not been following the said decision.

28. The questions must, therefore, be considered in the afore-mentioned factual backdrop.

29. The first question that arises for consideration is, whether the reservation on the basis of domicile is impermissible in terms of Clause (1) of Article 15 of the Constitution of India. The term "place of birth" occurs in Clause (1) of Article 15 but not "domicile". If a comparison is made between Article 15(1) and Article 16(2) of the Constitution of India, it would appear that whereas the former refers to "place of birth" alone, the latter refers to both "domicile" and "residence" apart from place of birth. A distinction, therefore, has been made by the makers of the Constitution themselves to the effect that the expression 'place of birth' is not synonymous to the expression "domicile" and they reflect two different concepts. It may be true, as has been pointed out by Shri Salve and pursued by Mr. Nariman, that both the expressions appeared to be synonymous to some of the members of the Constituent Assembly but the same, in our opinion, cannot be a guiding factor. In D.P. Joshi's case (supra), a Constitution Bench held so in no uncertain terms.

30. This Bench is bound by the said decision.

31. In State of U.P. v. Pradip Tandon this Court observed (SCC p.277 para 29):

"29. The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appears to be made for the majority population of the State. Eighty per cent of the population of the State cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas. Poverty, is found in all parts of India. In the instructions for reservation of seats it is provided that in the application form a candidate for reserved seats from rural areas must submit a certificate of the District Magistrate of the District to which he belonged that he was born in rural areas and had a permanent home there, and is residing there or that he was born in India and his parents and guardians are still living there and earn their livelihood there. The incident of birth in rural areas is made the basic qualification. No reservation can be made on the basis of place of birth, as this would offend Article 15."

32. Answer to the said question must, therefore, be rendered in the negative."

These afore-extracted paragraphs extracted above were sought to be read by the respondents to be in their favour who have contended that preference on the basis of domicile is indeed permissible and does not offend the constitutional

scheme of things.

It is also imperative to note here that the reservation by way of institutional preference was approved and held to be valid and hence it need not detain us as we have already dealt with this matter while determining the issues brought forthwith in CWP no.8962 of 2018 titled as Dr. Chahat Bhatia vs. Government Medical College & Hospital, Sector 32, Chandigarh and others' decided on 15.5.2018 and we had held as below:-

"The controversy narrows down to settling questions in principle which we may set out as below :-

i) Whether in the wake of the condition imposed in the prospectus coupled with the fact of a singular institute in the territorial boundary of UT Chandigarh preference contemplated in the prospectus would tantamount to 100% reservation in favour of the incumbents having completed their MBBS course from Government Medical College and Hospital, Sector 32, Chandigarh or not.

ii) Whether the candidates who have done their schooling in Chandigarh or are connected to the City of Chandigarh would need to be treated preferentially or not.

In so far as the second issue is concerned, it need not engage our attention for a longer period considering it has been settled by the various pronouncements of the Hon'ble Supreme Court deprecating preference or weightage on the basis of residence alone. So, the surviving issue is the one that we have set out at (i) above.

Institutional preference, conceptually has found its approval and placed on a firm pedestal by now, right from the pronouncement of Dr.Jagdish Saran v. Union of India, 1980(2), SCC 768, Dr.Pardeep Jain v. Union of India, 1984(3) SCC 654, Dr.Dinesh Kumar v. Motilal Nehru Medical College, Allahabad, 1985(3) SCC 22 and Saurabh Chaudri and Ors. v. Union of India and Ors, 2004 AIR (SC) 361.

In para 72 of Saurabh Chaudri's case (Supra) it has been observed as under :

"Having regard to the facts and circumstances of the case, we are of the opinion that the original scheme as framed in Dr.Pradeep Jain case should be reiterated in preference to Dr.Dinesh Kumar (II) case. Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest."

It would be relevant to refer to para 74 of this very judgment as under :-

"AIIMS is an institution of excellence. It is a clause by itself and pride. We are, therefore, of the opinion that in AIIMS and the medical colleges of the Central university, merit should have primacy subject of course to institutional preference to the extent of 50% of the total seats in the MBBS course. In all other respects, the decision of this Court in AIIMS Students' Union case shall operate."

Before this, in para 67 it was observed as follows :-

"This Court may therefore notice the following : (i) The State runs the Universities.

(ii) It has to spend a lot of money in imparting medical education to the students of the State.

(iii) Those who get admission in Post Graduate Courses are also required to be paid stipends. Reservation of some seats to a reasonable extent, thus, would not violate the equality clause.

(iv) The criteria for institutional preference has now come to stay. It has worked out satisfactorily in most of the States for the last about two decades.

(v) Even those States which defied the decision of this Court in Dr. Pradeep Jain's case (supra) had realized the need for institutional preference.

(vi) No sufficient material has been brought on record for departing from this well-established admission criteria.

(vii) It goes beyond any cavil of doubt that institutional preference is based on a reasonable and identifiable classification. It may be that while working out the percentage of reservation invariably some local students will have preference having regard to the fact that domicile/residence was one of the criteria for admission in MBBS Course. But together with the local students 15%, students who had competed in all India Entrance Examination would also be getting the same benefit. The percentage of students who were to get the benefit of reservation by way of institutional preference would further go down if the decision of this Court in Dr. Pradeep Jain's case (supra) is scrupulously followed.

(viii) Giving of such a preference is a matter of State policy which can be invalidated only in the event of being violative of Article 14 of the Constitution of India.

(ix) The students who would get the benefit of institutional preference being on identifiable ground, there is hardly any scope for manipulation."

It is, therefore, not difficult to conclude that institutional preference would be a valid criteria but what can be irksome and bad in law is the extent thereof."

There is thus no element of doubt about reservation of institutional preference which we have determined in that case and in conclusion we had observed as below:-

"Therefore, total number of seats for the institutional preference are the residual ones that fall to the institution after All India Quota is consumed. Thus the interpretation placed by the Chandigarh Administration would virtually discard from the process of consideration other aspirants who may, being from the region be higher up in merit but would stand excluded.

To avoid merit being a casualty it would be in the fairness of things that 50% institutional preference be restricted to 62 seats falling to the share of the institution after the remaining 50% have been consumed in the All India quota. The chart segregating the quota meant for institutional preference seats and those for UT, Chandigarh pool depicts 32 seats each which is in conformity with the directions given by this Court in CWP No.8962 of 2018. The only point of discord is that seats have been set out for U.T Chandigarh pool by placing primacy on those candidates who are (i) candidates with background of Chandigarh and to be eligible for such a category a candidate should have (a) studied for a period of 5 years in UT, Chandigarh at any point of time prior to the last date of submission of the application. or

(b) such candidate's parents ought to have resided in UT, Chandigarh for a period of 5 years at any point of time prior to the last date of submission of the application either in pursuit of a profession or holding of a job. or

(c) the candidate should be children of person who has held immovable property in UT, Chandigarh for a period of 5 years at any time prior to the last date of submission of the application and the property should be in the name of the parents or the candidate himself/herself at any point of time prior to the last date of submission of the application.

This is one question, we did not broach in earlier CWP no.8962 of 2018 (as reproduced below), as no one raised a doubt about it at that time but now since focus is on this issue we would readily examine it.

"Nobody has raised any question to Clauses PG-8 or PG- 8.1 where the candidates having linkage to Chandigarh either through education or placement of their parents or property, and therefore, it need not invite any comment from us. Suffice it to say that the interpretation of institutional preference with its applicability of total number of seats which are 125 has resulted in a situation that reeks of arbitrariness and a resultant violation of Article 14 of the Constitution of India. We would thus hold the stand of the UT Chandigarh erroneous in this regard. While upholding the principal of institutional preference we would direct that it would relate to 50% of the seats available to the institution after 50% of All India Quota has been consumed and upon such calculation throw open the seats to other deserving aspirants."

To test the rationale, we would pick up all the three stipulations one by one.

If we look at stipulation (a) that a person ought to have studied for 5 years in UT, Chandigarh at any point of time prior to the last date of submission of the application then it is capable of following two interpretations:

(i) That if a preference in this category is given it will increase the reservation for institutional preference. One has to be mindful of the fact that we are dealing with admission to Post Graduate courses and if there is a student who has studied 5 years in UT, Chandigarh at any time prior to the last date of submission

of the application, it will certainly lean in favour of those who have studied for their MBBS degree in UT, Chandigarh.

Since there is only one college in Chandigarh, the benefit flowing from such a clause would merge with that of the institutional preference, thereby upsetting the balance provided by a 50% cap intended for Institutional Preference. This clause is, therefore, fraught with inherent dangers.

Second situation would be that a candidate might have studied for 5 years in UT, Chandigarh at any time prior to the last date of the submission of the application which would also mean studying from Kindergarten to Class V or for any other period for that purpose. This would hardly provide any rationale to the logic of claiming a seat for a post graduate course under the UT, Chandigarh pool.

Similarly, clause (b) reads an entitlement for those whose parents have resided in UT, Chandigarh for a period of 5 years at any point of time prior to the last date of submission of the application either in pursuit of a profession or in holding a job. This too does not offer any rationale to convert it into a preference for the simple reason that a person may have settled down in Chandigarh briefly for a period of 5 years and then departed. The absurdity of this stands out if we visualize a situation, of a person having come to Chandigarh possibly at the time when it was coming up in the 1950s and departed after spending 5 years only to return after a lapse of more than 60 years and claim a preference since he had spent 5 years in Chandigarh at some time and fulfills the condition of being a resident of this town "at any time prior to the last date of submission of the application."

Likewise, clause (c) also offers a similarly absurd situation of there being a case where a person has invested in property, may be at any point of time but choosing to give it up, and yet fulfilling the clause of owning a property for a period of 5 years at any time prior to the last of submission of the application.

None of these contingencies to our minds have any sustainable rationale as they even take into fold those persons who have had a brief flirtation with the city of Chandigarh either in education of their ward, in residence or through property which at best be termed to be a romantic liaison with the city but it cannot form a valid consideration for a preference while assessing merit to a Post Graduate course.

Finding absolutely no rationale or nexus with the object sought to be achieved, assuming such a reservation was possible, we would have no hesitation in saying that such a clause in the prospectus is unsustainable. Besides Hon'ble Supreme Court in Saurabh Chaudri's case (supra) as also Dr. Pradeep Jain's case (supra) has unequivocally laid down that reservation/preference on the basis of residence has to be deprecated in the matters of admission to Post Graduate courses where the only criteria required to prevail, is merit.

Hon'ble Supreme Court in Saurabh Chaudri's case (supra) has held as below:-

"46. A large number of decisions on the point were taken into consideration by this Court in Dr. Pradeep Jain's case. Upon a detailed analysis of the constitutional provisions, case laws as also the practical difficulties faced by the States, students as also the institutions, it was held (SCC pp.672-73, para 10):-

"....What is, therefore, necessary is to set up proper and adequate structures in rural areas where competent medical services can be provided by doctors and some motivation must be provided to the doctors servicing those areas. But, as the position stands today, there is considerable paucity of seats in medical colleges to satisfy the increasing demand of students for admission and some principle has, therefore, to be evolved for making selection of students for admission to the medical colleges and such principle has to be in conformity with the requirement of Article 14. Now, the primary imperative of Article 14 is equal opportunity for all across the nation for education and advancement and, as pointed out by Krishna Iyer, J. in Jagdish Saran (Dr.) v. Union of India 'this has burning relevance to our times when the country is gradually being "broken up into fragments by narrow domestic walls" by surrender to narrow parochial loyalties". What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality. Anyone anywhere, humble or high agrestic or urban, man or women, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, speciality or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases, would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. It is axiomatic that talent is not the monopoly of the residents of any particular State; it is more or less evenly distributed and given proper opportunity and environment, everyone has a prospect of rising to the peak. What is necessary is equality of opportunity and that cannot be made dependent upon where a citizen resides. If every citizen is afforded equal opportunity, genetically and environmentally, to develop his potential, he will be able in his own way to manifest his faculties fully leading to all round improvement in excellence. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. 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 opportunity 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 instruction 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 resident within the State would be likely to promote substandard candidates and bring about fall in medical competence, injurious in the long run to the very region. "It is no blessing to inflict quacks and medical midgets on people by wholesale sacrifice of talent at the threshold. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation." The primary consideration in selection of candidates for admission to the medical colleges must, therefore, be merit. The object of any rules which may be made for regulating admissions to the medical colleges must be to secure the best and most meritorious students."

But it was observed : (SCC p.661 para 1)

"...Whether consistently with the constitutional values, admissions to a medical college or any other institution of higher learning situate in a State can be confined to those who have their 'domicile' within the State or who are residents within the State for a specified number of years or can any reservation in admission be made for them so as to give them precedence over those who do not possess 'domicile' or residential qualification within the State, irrespective of merit..."

After noticing the observations of Hon'ble Justice Krishna Iyer in Jagdish Saran's case (supra) the conclusion in Saurabh Chaudri's case was the same as the one accorded in Dr. Pradeep Jain's case.

We would, therefore, conclude that in the matters of admission to Post Graduate courses such a reservation/preference which has its foundations in a long discarded principle i.e domicile would be unsustainable. Besides, all the clauses that have been introduced in the brochure and discussed to describe a candidate with background of Chandigarh would be unsustainable in law as they have no rationale to the objects sought to be achieved even if we have to assume that such a preference was permissible in law.

We, therefore, strike down clause 2 (a) (b) and (c) of UT, Chandigarh Pool as being invalid and unsustainable in law. All admissions made by placing reliance on the above would as a logical corollary be also unsustainable. The only course available to the college is to fill up the seats through merit position obtained by candidates in NEET examination.

Petitions stand disposed of in above terms.