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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9289 OF 2019
(Arising out of SLP (Civil) No. 12918 of 2019)

DR. TANVI BEHL ….APPELLANT(S)

VS

SHREY GOEL & ORS. ….RESPONDENT(S)

WITH

(Civil Appeal No.9290 of 2019 @ SLP(C) No. 11441 of 2019, Civil Appeal No.9291 of 2019 @ SLP(C) No. 11477 of 2019 and Civil Appeal Nos.9292-9293 of 2019 @ SLP(C) Nos. 12919-20 of 2019

ORDER

Dinesh Maheshwari, J.

Preliminary

1. Leave granted.

2. These four appeals by special leave, directed against the common judgment and order dated 23.04.2019, as passed by the High Court of Punjab and Haryana at Chandigarh in CWP No. 8234 of 2019 (O&M) and CWP No. 9565 of 2019 (O&M) and involving essentially the same questions relating to the legality and validity of domicile/residence-based reservation for admission

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to the Post Graduate Medical Courses (MD/MS Courses 2019)[1] in Government Medical College and Hospital, Chandigarh[2], have been considered together and shall be governed by this common order.[3]

3. By the impugned judgment and order dated 23.04.2019, the High Court of Punjab and Haryana at Chandigarh has held invalid the provisions made by the said Medical College in its prospectus, so far relating to the domicile/residence-based reservation as provided in UT[4] Chandigarh Pool; and has struck down the same while directing that all the admissions made on the basis of such invalid reservation in the said Medical College be cancelled and fresh admission process for admission to the PG Medical Courses for the academic year 2019-20 be carried out on the basis of merit obtained by the candidates in National Eligibility-Cum-Entrance Test.[5] Aggrieved, the candidates whose admission to the PG Medical Courses were to be cancelled as also the UT of Chandigarh and the said Medical College have preferred these appeals.

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[1] Hereinafter also referred to as "the PG Medical Courses"
[2] Hereinafter also referred to as "the Medical College"/ "the said Medical College".
[3] It may be noticed at the outset that the questioned reservation has been provided for the '**candidates with background of Chandigarh**'. The candidates eligible under this category are those (i) who have studied for 5 years in Chandigarh; or (ii) whose parents have resided in Chandigarh for a period of 5 years; or (iii) who are children of the persons who have held or are holding immovable property in Chandigarh or who themselves have held or are holding such immovable property for a period of 5 years. Having regard to the submissions made and the questions involved, notwithstanding the subtle distinction in the two concepts of domicile and residence [as noted by this Court in the case of *Yogesh Bhardwaj v. State of U.P. and Ors*.: (1990) 3 SCC 355], the reservation/preference in question is referred herein as 'domicile/residence-based reservation'.
[4] 'Union Territory' is abbreviated as 'UT'
[5] Hereinafter also referred to as "NEET" / "NEET- PG 2019"

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The basic facts concerning the parties

4. Before dilating on the rival contentions and the issue involved, appropriate it would be to make a brief reference to the factual aspects concerning the parties before us.

4.1. The appellant in the appeal arising out of SLP(C) No. 12918 of 2019, completed her graduation in the year 2014; got herself registered as a doctor with the Punjab Medical Council on 04.08.2016; appeared for the NEET-PG 2019 for securing admission to a PG Medical Course; scored 410 marks and was placed at 51533 in All India Rank. The appellant thereafter applied for admission under UT Pool Quota as she was domiciled in Chandigarh since 2006. Pending adjudication of CWP No. 8234 of 2019 (O&M) before the High Court, the appellant was selected for admission to MD in Microbiology in the first round of counselling held on 05.04.2019; paid the course fees amounting to Rs. 33,420/-; and was waiting for her classes to begin from 01.05.2019. With the impugned order dated 23.04.2019 her admission being in jeopardy, she has preferred this appeal though she was not a party to the said writ petition/s.

4.2. The appellants of SLP(C) No. 11441 of 2019, upon completing their graduation, had appeared in the same NEET-PG 2019 conducted on 06.01.2019 and had secured 639 and 454 marks, thereby standing at 10910 and 40780 ranks respectively. The appellant No. 1 herein belongs to General Category while the appellant No. 2 belongs to Schedule Caste Category. These appellants had applied for admission in the said Medical College;

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participated in the counselling sessions; were offered seats under the UT Chandigarh Pool being higher in merit; were allotted their respective subjects; and had paid the requisite fees. These appellants were respondent Nos. 11 and 5 respectively in CWP No. 8234 of 2019 (O&M) before the High Court and have preferred the appeal for their admission being in jeopardy in view of the impugned order dated 23.04.2019.

4.3. The appellant of SLP(C) No. 12919-20 of 2019 completed her MBBS in 2016 and had been registered as a doctor with the Punjab Medical Board. She too appeared in NEET-PG 2019 conducted on 06.01.2019 and stood at rank 2164 with a score of 770 marks. She participated in the counselling sessions conducted thereafter; and was selected for the course of M.S. in General Surgery under the All India Quota. Though the appellant had taken admission in the said course but was listed at serial No. 8 in the UT Chandigarh Pool Quota list and as such, was hopeful of getting allotted another course in that Quota.

4.3.1. It is the case of the appellant that despite being selected in the first round wherein she was allotted M.S. in General Surgery and while waiting for the second round of counselling, the Medical College mandated that she ought to surrender her seat of M.S. in General Surgery before appearing in the second round of counselling under the UT Chandigarh Pool Quota though such surrendering of the seat was not mandated in relation to the other candidates. Nevertheless, the appellant secured a seat in M.S. in Obstetrics and Gynaecology in UT Chandigarh Pool Quota and duly paid her fees on

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05.04.2019. Subsequently, with passing of the order impugned, the admission of this appellant was also in jeopardy and hence she, though not a party to the said writ petition/s, has preferred this appeal.

4.4. The appellants of the appeal arising out of SLP(C) No. 11477 of 2019 are the Union Territory of Chandigarh and the said Government Medical College and Hospital, Chandigarh, whose proposition for domicile/residence-based reservation in UT Chandigarh Pool has been pronounced against by the High Court.

4.5. Therefore, all the appellants herein are aggrieved of the impugned order dated 23.04.2019 and have questioned the same on more or less similar grounds.

5. On the other hand, the contesting respondents of these appeals had been the writ petitioners before the High Court questioning the domicile/residence-based reservation. They have supported the impugned order on identical submissions.

6. It may be noticed that the Medical Council of India was not a party to this litigation before the High Court but was ordered to be impleaded in these proceedings by the order dated 06.05.2019. Further, on 09.05.2019, this Court allowed the appellants to implead the already admitted students (academic session 2019-20) as parties; and granted *ad-interim* stay over the impugned order of the High Court while making it clear that the admission process which was completed on the basis of the stated provisions governing

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domicile/residence-based reservation shall be subject to the outcome of these matters.

The question involved and the background aspects

7. The principal question calling for determination in these matters is as to whether providing for domicile/residence-based reservation in admission to PG Medical Courses is constitutionally invalid and is impermissible? If answer to this question is in the negative and it is held that such reservation is not impermissible, the corollary questions would be as to the mode and modalities for providing such reservation in the respective States/ Union Territories; and more particularly, in relation to the State or Union Territory having only one medical college. The background in which these questions have arisen could be noticed as *infra*.

Academic year 2018-19 – decision in *Dr. Chahat Bhatia's* case

8. For the academic year 2018-19, the Government Medical College and Hospital, Chandigarh had issued a prospectus for its PG Medical Courses while stating that 125 seats were available with the institution in the said PG Medical Courses of which, 50% i.e., 63 seats were allocated to All India Quota whereas the remaining 62 seats were meant for the students who had passed MBBS examination from the medical institutions of UT Chandigarh.[6] This prescription of '*institutional preference*' was challenged by way of a writ petition before the High Court of Punjab and Haryana, being **CWP No. 8962**

[6] Out of these, 15% seats remain reserved for the Scheduled Caste candidates. The seats remaining after such reservation are referred as open seats and the discussion herein essentially relates to such open seats.

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of 2018: *Dr. Chahat Bhatia v. Government Medical College and Hospital, Sector 32, Chandigarh and Ors.* The High Court, by way of its interim order dated 07.05.2018, stayed the application of the Clause relating to '*institutional preference'*. Assailing the said stay order, SLP (C) No. 12593 of 2018 was filed by the Medical College wherein this Court, by the order dated 10.05.2018, directed the High Court to dispose of the matter on priority and also directed that the candidates who had secured admissions shall not be displaced, subject to the final decision in the matter. Subsequently, the High Court, by its order dated 15.05.2018, held that while calculating institutional preference, the seats reserved under All India Quota ought to be excluded. The question of reservation on the basis of 'domicile' was never challenged and, therefore, the High Court did not deal with the said issue.

8.1. The High Court, in its order dated 15.05.2018 noted that there was only one medical institution located within the territory of Chandigarh leading to the position that all the seats, after deducting the reserved ones, would be filled up from the candidates passing their MBBS examination from the said Medical College, thereby depriving all other candidates from the region of an opportunity of admission to the PG Medical Courses at Chandigarh. It was contended that the proposition of the Medical College amounted to 100% reservation on institutional preference which was impermissible in terms of the settled decisions of this Court. In view of the contentions urged, the Court noted the two issues calling for determination as under:-

> *"i) Whether in the wake of the condition imposed in the prospectus coupled with the fact of a singular institute in the*

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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."

8.2. After having thus noted the issues involved, the High Court put aside the second issue with the following observations:-

"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."

8.3. After the aforesaid observations, the High Court noted that the concept of institutional preference was standing on firm pedestal with various pronouncements of this Court; and, particularly with reference to the Constitution Bench decision in ***Saurabh Chaudri and Ors. v. Union of India and Ors.:*** **2013 (11) SCC 146,** observed that it was not difficult to conclude that the institutional preference would be a valid criterion but then, its extent could be irksome and bad in law. The High Court also referred to the provisions made in regulation 9(IV) and 9A of the Post-Graduate Medical Education Regulations, 2000 prescribed by the Medical Council of India as also the institutional preference provided by different States like the State of Punjab and the State of Haryana. Thereafter, the High Court expressed its disapproval of the allocation of seats as provided by the UT Chandigarh and the Medical College while observing as under:-

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"To our mind, if we see the break-up of seats, 63 out of 125 seats, being 50% would be consumed in the All India Quota leaving the residue of 62, which, if the prescribed criteria of the prospectus is applied, would leave no seat for any other aspirant.

The learned Senior Standing Counsel for UT, Chandigarh would be quick to respond to refer to clauses PG-8 and PG-8.1 to contend that there is a procedure prescribed to fill the left over seats where the candidates who have studied in Chandigarh for a period of 5 years or the children of persons who have resided in Union Territory of Chandigarh for a period of at least 5 years or the children of persons who have held immovable property in UT Chandigarh for a period of 5 years at any time prior to the last date of the submission of the application, would be considered.

This in itself would make no significant impact to the primary question that we are dealing with i.e. there being 100% institutional preference. In fact, the mischief seems to have been done not in prescribing the conditions of preference but by placing an interpretation on the calculation for institutional preference by taking into account the seats. The prospectus states that 50% of total number of seats have been reserved for institutional preference for students of medical institution of UT Chandigarh. "Total number of seats" taken for this determination of institutional preference seats is 125, which according to us, would be erroneous for the simple reason that out of 125 seats allocated to the UT pool 50% i.e. 63 seats would be propelled out of orbit of the UT Chandigarh pool the moment they are consumed in the All India Quota leaving only 62 seats for the College to be filled up. 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 casuality 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."

8.4. Interestingly, the High Court, even though made a cursory observation in the earlier part of the order that the second issue as regards preferential treatment to the candidate having connectivity with the city of Chandigarh

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need not be dilated, for this Court having not approved the preference or weightage on the basis of residence alone but then, proceeded to observe in the later part of the order that the linkage of the candidate to Chandigarh was not questioned and hence, would not invite any comment from the Court. With these observations, the High Court concluded and held as follows:-

> *"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.*
>
> *Issues have been raised about individual candidates and their eligibility, but we are of the opinion that these are matters to be left to the Committee in-charge of Counselling to examine.*
>
> *In view of the above, we direct the Government Medical College and Hospital, Sector 32, Chandigarh to conduct the counselling afresh by keeping in view the above."*

8.5. Aggrieved by the order aforesaid, a petition for Special Leave to Appeal, being SLP (C) No. 13562 of 2018, was filed in this Court but the same was dismissed *in limine* on 24.05.2018.

Academic year 2019-20

9. The Medical College, following the aforesaid decision in the case of *Dr. Chahat Bhatia* (supra), issued the prospectus on 16.03.2019 for admissions to the PG Medical Courses for the academic year 2019-20 stating that the total number of seats were 128, which were equally divided into All India Quota and

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State Quota, as set out in Clause 1 and Clause 2 of the prospectus. More specific to the case at hand, Clause 2 explained that the State Quota was further divided in Clause 2A (Institutional Preference Pool) and Clause 2B (UT Chandigarh Pool). This Clause 2B is the bone of contention herein. For ready reference, the entire Clause 2 pertaining to the State Quota seats may be reproduced as under:-

> *" 2. State Quota: 64 seats. In compliance of the decision of Hon'ble Punjab and 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 fulfil eligibility criteria as below: This category will include candidates with background of Chandigarh. To be eligible for this category candidate should fulfil any of the following criteria:-*
    i. *Studied for a period of 5 years in the 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 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*

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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."

Challenge before the High Court–the impugned order dated 23.04.2019

10. The private respondents (writ petitioners) challenged the legality and validity of the aforesaid Clause 2B of the prospectus in **CWP No. 8234 of 2019 (O & M): *Shrey Goel and Ors v. Union Territory of Chandigarh and Anr.*** before the High Court of Punjab and Haryana. Pending disposal of this petition, another writ petition, being **CWP No. 9565 of 2019 (O & M)**: ***Shweta Sandhu and Ors v. Union Territory of Chandigarh and Anr***. was filed on 05.04.2019 by other candidates with similar challenge to the said Clause 2B of the prospectus. Besides this, similarly aggrieved candidates filed various impleading applications in the said petitions. By way of its order dated 12.04.2019, the High Court allowed such applications and the applicants were impleaded as respondent Nos. 13 to 22 to the said petitions.

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10.1. The said writ petitions were tagged together and the High Court, by its common order dated 23.04.2019, struck down the impugned Clauses of the prospectus issued by the Medical College. The High Court took note of the issue involved in the matter as follows:-

> *"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 v. Union of India and others*** *reported as (2003) 11 SCC 146 , or not?"*

10.2. The High Court reproduced some of the observations made by this Court in the referred decisions including those in ***Dr. Pradeep Jain and Ors. v. Union of India and Ors.:*** **(1984) 3 SCC 654** and those occurring in paragraphs 29 to 32 of the Constitution Bench decision in *Saurabh Chaudri* (supra) as also the fact that only the question of institutional preference was decided in *Dr. Chahat Bhatia* (supra) and the question of domicile/residence-based reservation was not gone into. The High Court, thereafter, proceeded to consider the three stipulations occurring in the impugned Clause 2B of the prospectus (as noticed above) and disapproved the same while observing as under:-

> *"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:*

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(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 Kindergarden 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."

10.3. Thereafter, the High Court, with reference to the aforesaid decisions in *Saurabh Chaudri*'s case and *Dr. Pradeep Jain*'s case, observed that there existed no nexus of the impugned stipulations with the object

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sought to be achieved i.e., making reservations on the basis of residence; and such a reservation has to be objected to, for admission to the PG Medical Courses should be only on the basis of merit. The High Court held and concluded as under:-

> *"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 examinations."*

The submissions:

11. The learned counsel appearing for the appellants have made more or less similar nature submissions in support of their challenge to the order impugned that have been countered by the learned counsel appearing for the contesting respondents. The learned counsel appearing for the Medical Council of India has also made elaborate submissions as regards the scheme of examination and the admissions in question as also in response to various queries of this Court. We may briefly take note of the varying submissions and contentions so urged.

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11.1. The substance of submissions on behalf of the private appellants, the candidates who had secured admission in the respective branches of PG Medical Courses in the said Medical College, has been that the High Court has erroneously held the domicile/residence-based reservation to be impermissible for admission to the PG Medical Courses. The learned counsel appearing for the respective appellants have argued that even when a three-Judge Bench of this Court in the case of *Dr. Pradeep Jain* (supra) expressed its disapproval of domicile/residence-based reservation for admission to PG Medical Courses, the Constitution Bench of this Court in *Saurabh Chaudri* (supra) has not disapproved such domicile/residence-based reservation. The learned counsel have particularly referred to paragraphs 29 to 32 of the decision in *Saurabh Chaudri* (supra) in support of their contentions and have also urged that in paragraphs 38 to 70 in *Saurabh Chaudri's* case, the Constitution Bench has only considered the constitutional validity of institutional preference and in that context, the law laid down in *Dr. Pradeep Jain* was upheld but the said decision in *Saurabh Chaudri* cannot be relied upon for disapproval of domicile/residence-based preference for admission to the PG Medical Courses; and there is no constitutional bar over providing such a preference. It has further been contended that the criteria as laid down by UT Chandigarh and its Medical College cannot be said to be offending the principle of equality; and the High Court has seriously erred in treating the same to be arbitrary and unlawful. It has also been contended on behalf of these appellants that in any case, the High Court could not have set aside the

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admissions that had been made for the academic year 2019-20, particularly when counselling of the candidates had been completed and in fact, there was no specific prayer for setting aside the admissions already given. In the alternative part of submissions, it has also been contended in the appeal arising out of SLP(C) No. 1141 of 2019 that this aspect of reservation on the basis of domicile/residence for admission to PG Medical Courses is required to be reconsidered and decided by a Larger Bench of this Court.

11.2. On behalf of the other appellants-UT Chandigarh and the Medical College, the learned senior counsel has also extensively referred to various decisions of this Court as also the decision of the High Court in *Dr. Chahat Bhatia* (supra) and has submitted that until the academic year 2018-2019, these appellants were filling up the total number of Post-graduate seats available in the UT by dividing them in two parts: 50% of the total number of seats for All India Quota and remaining 50% by way of institutional preference from amongst the students who had passed out from the appellant-Medical College. However, this process was challenged and the High Court, in its decision in *Dr. Chahat Bhatia* (supra) ruled that institutional preference would remain restricted to 50% of the State Quota seats[7]. According to the learned counsel, in the wake of the decision in *Dr. Chahat Bhatia* and the fact that UT Chandigarh has only one medical college, the position obtainable had been that the UT Administration could have kept only 32 seats (50% of 64 number of State Quota seats) reserved to be filled up by way of institutional

[7] This would effectively mean 25% of total open seats being allowed for institution preference – being 50% of the 50% State Quota seats.

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preference. In this scenario, according to the learned counsel, provision was required to be made for the remaining 50% of State Quota seats allotted to UT Chandigarh and for this purpose, the UT had to identify such students by providing some criteria. Thus, according to the learned counsel, such criteria for filling up the remaining State Quota seats came to be reflected in Clause 2B of the prospectus; and the criteria so provided by the appellants are neither invalid nor suffer from any illegality, so as to be struck down.

11.2.1. The learned senior counsel has further referred to the fact that in the scheme of examination and admission to the PG Medical Courses, the State Quota seats are to be filled up by the respective States by following their respective qualifying criteria and guidelines; and has referred to Clauses 13.2 and 14.9 of the Information Bulletin issued by the National Board of Examination that conducts the National Eligibility-Cum-Entrance Test.[8] Thus, according to the learned counsel, domicile/residence-based preference for State Quota seats is recognised by the National Board of Examination too. The learned counsel has reiterated the submission that in *Saurabh Chaudri*'s

[8] The said clauses read as under:-

> 13.2 For States/Union Territories – 50% State Quota Seats and Private Medical Colleges/Institutes/Universities/Deemed Universities:
>
> a) Reservation policy and guidelines applicable in different States/Union Territories of India will be followed for the respective State/Union territory quota seats.
>
> b) NBE shall be providing only the data of candidates and the marks scored by them in NEET-PG to the State Governments/Counselling Authority without applying the reservation prevalent in the concerned States/Private Medical Colleges/Institutes/Universities. The merit list and category wise merit list for the concerned State shall be generated by the State themselves as per the applicable Regulations, qualifying criteria, applicable guidelines and reservation policies.
>
> Clause 14.9: RESULT FOR STATE QUOTA SEAT:
>
> e) Candidates must verify from the respective State Government/UTs if at all they will be considered for admission to State Quota Post Graduate seats/Institute Pool **based on applicable Regulation and/or domicile criteria**, State/Institute of Graduation, reservation policy etc. Merely appearing/passing in NEET-PG 2019 does not make a candidate qualified and/or eligible for State Quota Seats/admission to Private Universities & Institutes.
>
> (emphasis supplied)

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case, the Constitution Bench has not ruled against the domicile/residence-based reservation for admission to the PG Medical Courses.

11.2.2. The learned counsel has also referred to the provisions made by various other States and Union Territories for the purpose of filling up the State Quota seats; and has pointed out that not only the UT Chandigarh but several other States and Union Territories have made similar provisions on domicile/residence-based preference for filling up such 50% State Quota seats in PG Medical Courses.[9]

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[9] The summary of procedure followed for PG Admissions in different States/UTs, as placed before us by the counsel for the appellants makes out that in all such admissions, 50% seats are provided for All India Quota but as regards 50% of State Quota seats, different provisions have been made by different States/Union Territories. These aspects are duly corroborated in the summary of such admission processes in different States/UTs, as placed before us by the learned counsel for the Medical Council of India. The provisions in relation to some of the States/UTs are stated as under:-

StateReservationsHARYANA
2019-STATE 50% Quota

- 20% -Institutional preference.
- 5% of annual sanctioned intake CAPACITY –Persons with Disabilities.
- Open Merit* (left over seats)

Eligibility Criteria:
-Passed MBBS/BDS from any recognised Medical Institution in Haryana as a resident of Haryana.
- Passed MBBS/BDS from any recognised Medical Institution in India who's Parents produce a Haryana Resident Certificate.PUNJAB
2018STATE 50% Quota through Baba Farid University Of Health Science (BFUHS)
50% -Institutional PreferenceANDHRA PRADESH
2019-2020-STATE 50% Quota

- 85% seats in favour of Local Candidates in relation to local areas.
- 15% seats for residents of 10 yrs/parents employed in Govt. jobs in State/ if spouses of candidates are in Govt. jobs in the state/employed in quasi-public institutions.

-50% of seats in Private Institutions are under competent authority.MAHARASHTRA
2019-STATE 50% QUOTA
- Domicile candidates of State who have got admission to MBBS through 15% AIQ can apply for admission state quota seats.
-50% of seats in Private Institutions are under State CET cell quota/rest 50% are through institutional preference.BIHAR 2018-STATE 50% Quota
- Domicile candidates of State who have got admission to MBBS through exam conducted by AIQ/ Govt. of Bihar before bifurcation of state can apply for admission in state quota seats.
- Candidate who is not a permanent resident of Bihar but has passed MBBS from any Medical college in Bihar.
- Reservation of 50% of total seats for SC/ST/EBC/BC/RCG/DQ permanent residents of BiharKARNATAKA 2019-STATE 50% Quota
Eligibility Criteria:
-Cleared MBBS/BDS from an Institution in State of Karnataka
-Cleared MBBS/BDS from an Institution in India and studied for minimum 10 academic years in Karnataka and must have completed his/her Higher Secondary from Karnataka. RAJASTHAN 2019-STATE 50% Quota
-25% Reserved for Institutional Preference
-25% Reserved for candidates who have cleared MBBS from medical institutes of RajasthanUTTAR PRADESH, 2019-STATE 50% Quota
-Seats Reserved for candidates who have cleared MBBS from medical institutes of UP.

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12. *Per contra,* learned senior counsel for private respondents (the writ petitioners) has extensively referred to the aforesaid decision of this Court in *Dr. Pradeep Jain* and *Saurabh Chaudri* and has further relied upon the decisions in ***Jagdish Saran v. Union of India:*** **(1980) 2 SCC 768;** ***Magan Mehrotra v. UOI*** **:(2003) 11 SCC 186;** ***Nikhil Himthani & Ors. v. State of Uttarakhand & Ors*****.: (2013) 10 SCC 237;** ***Vishal Goyal & Ors. v. State of Karnataka & Ors.:*** **(2014) 11 SCC 456;** ***Dr. Kriti Lakhina v. State of Karnataka*****: 2018 SCC online SC 324;** and ***Satyabrata Sahoo & Ors. v. State of Orissa*** **:(2012) 8 SCC 203.** The learned counsel would submit that in accord with the said decisions, these respondents, having passed their M.B.B.S. course and having applied under 'institutional quota', are entitled for admission to the PG Medical Courses under the said quota of institutional

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-Domicile candidates of State who have got admission to MBBS colleges outside UP through AIQ can apply for admission in state quota seats.

. PUDUCHERRY, 2019-2020-STATE 50% Quota

-All Govt. Quota Seats reserved for residents of Puducherry.DELHI, 2019-STATE 50% Quota

- 50% seats allotted to Faculty of Medical Science, Delhi University.
- 50% seats allotted to Guru Gobind Singh Indraprastha University.

GOA, 2019-STATE 50% Quota (only one university)(Press Note)KERALA, 2019-STATE 50% Quota

- 383 seats in P.G. Degree courses
- 79 seats in PG Diploma Courses in the Government Medical Colleges
- 8 Seats for PG Degree at RCC, Trivandrum

-Eligibility:

- Academic : Applicants must have MBBS degree recognized by MCI
- Nativity: Applicants should have satisfied any of the following conditions:

- Indian Citizens of Kerala origin.

- Candidates who are sons/daughters of Non-Keralite parents, who have obtained MBBS Degree from any of the Medical Colleges in the State of Kerala.TELENGANA, 2019-STATE 50% Quota

- 85% seats in favour of Local Candidates in relation to local areas. (as provided in the Andhra Pradesh Educational Institution Order, 1974 as amended from time to time)

The Non local candidates do not have any reservations. The Nonlocal candidates are eligible for 15% unreserved seats only. The local candidates are also eligible for 15% unreserved seats.WEST BENGAL, 2019-STATE 50% Quota or Open Category candidates

- Passed MBBS/BDS from WB.

Permanent Resident of WBJHARKHAND 2019-STATE 50% Quota

- Domicile candidates of State who have got admission to MBBS through exam conducted by AIQ/ Govt. of Bihar before bifurcation of state in 2000 can apply for admission in state quota seats.

- Candidate who have passed MBBS from any Medical college/University in Jharkhand.

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preference but are deprived of the same because of the impugned domicile/residence-based reservation provided by the Medical College. He has also contended that the issue involved in the present matters is no more *res integra* as the reservation in PG Medical Courses on the basis of place of birth and/or residence/domicile has been disapproved, being violative of Article 14 of the Constitution of India; and that admission to specialised courses should be on the basis of merit alone. The learned senior counsel has further submitted that in the order impugned, the High Court has rightly observed that there is no nexus of the classification prescribed with the objective sought to be achieved i.e., allotting 50% of State Quota seats. The learned counsel would submit that in relation to the issue concerning 'admission on the basis of domicile', the High Court has observed in *Dr. Chahat Bhatia* that the practice has been repeatedly disapproved; and the said decision has attained finality. Thus, according to the learned counsel, domicile/residence-based reservation has rightly been disapproved in the order impugned.

13. The learned counsel for the Medical Council of India has also made extensive reference to the aforesaid decisions, including those in *Dr. Pradeep Jain* and *Saurabh Chaudri* and has submitted that, for the law settled by this Court in *Saurabh Chaudri,* 50% seats of the total seats in the PG Medical Courses are All India Quota Seats and are to be filled up from the All India Merit List. For these All India Seats, counselling is carried out by Directorate General of Health Services and the balance 50% goes to the respective

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States for which, counselling is carried out by the concerned State. According to the learned counsel, these 50% State Quota seats cannot be filled up by the State by imposing domicile/residential requirement, though the State may prescribe institutional preference as the criteria for filling up these 50% State Quota seats. Learned counsel has submitted that the impugned Clause 2B of the prospectus is violative of the principle of equality enshrined under Article 14 of the Constitution and is also contrary to the various judicial pronouncements of this Court and is, therefore, liable to be quashed.

13.1. The learned counsel has also placed on record a chart showing the policy of 21 States in applying institutional preference/reservation along with relevant portion of brochures/Information Bulletin published by the respective States. The learned counsel has also submitted that as per the time schedule framed by the Council with the prior approval of the Central Government as well as approved by this Court in ***Ashish Ranjan v. UOI & Ors.:*** **(2016) 11 SCC 225**, the date for commencement of academic year had been 01.05.2019 and the last date for completion of admission process for PG Medical Courses had been 31.05.2019; and all admissions to PG Medical Courses had already been completed for the current academic year 2019-20, which may not be disturbed at this belated stage.

13.2. The learned counsel for Medical Council in the last submitted that if at all the admissions are to be cancelled, manual counselling may be ordered only in relation to those students who have not joined and taken admission in

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any other college because any other proposition may upset the entire process of studies in the respective PG Medical Courses.

14. At this juncture, relevant it would also be to notice that during the course of hearing of these matters, it was pointed out by the learned counsel for parties that the question as regards institutional preference had been referred to a Larger Bench of this Court in the case of ***Yatinkumar Jasubhai Patel and others v. State of Gujarat and others:*** **SLP(C) No. 7003 of 2017.** It has, however, been brought to our notice that while decision remained pending in these matters, the said referred case and connected matters were decided by a three-Judge Bench of this Court on 04.10.2019 upholding the institutional preference for admission to the PG Medical Courses. Having regard to the question involved we would refer to the said decision at the appropriate stage hereafter later.

Whether domicile/residence-based reservation is entirely impermissible?

15. As noticed, the core question calling for determination herein is as to whether providing for domicile/residence-based reservation for admission to PG Medical Courses is constitutionally invalid and is impermissible. Several decisions of this Court have been referred by the learned counsel for the respondents in support of the impugned order of the High Court and in support of the contention that such a prescription is constitutionally invalid. In our view, the submissions on invalidity of the domicile/residence based reservation in relation to the State Quota seats and the assumption that such a proposition is long back discarded (as per the expression employed by the

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High Court) needs to be examined by a Larger Bench of this Court in view of the significance of the issue, which is of recurrence in every academic year for one reason or another; and particularly when varying views have been expressed by different Benches, which need to be reconciled with the observations made by the Constitution Bench of this Court in *Saurabh Chaudri's* case. We may, therefore, refer to the decision in *Saurabh Chaudri* in requisite details.

16. It could be profitably noticed that before the pronouncement in *Saurabh Chaudri* by the Constitution Bench, this Court had expressed desirability of merit-based admissions to the Medical Courses; and multiple vistas of such admission process were dealt with by this Court in several decisions like those in *Jagdish Saran, Dr. Pradeep Jain* as also in *Magan Mehrotra* (supra). In fact, reference to the Constitution Bench in *Saurabh Chaudri's* case had been in sequel to *Magan Mehrotra's* case inasmuch as a three-Judge Bench of this Court in *Magan Mehrotra* had held that apart from institutional preference, no other preference including reservation on the basis of residence was envisaged in view of the decision in *Dr. Pradeep Jain.* However, the notification consequently issued by Delhi University for institutional preference for admission to PG Medical Courses was questioned by the appellants claiming themselves to be the residents of Delhi. In this challenge; a Division Bench of this Court referred the matter to a three-Judge Bench having regard to the decision in *Magan Mehrotra;* and the three-Judge Bench directed the matter to be placed before a Bench of five Judges considering its importance.

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In this backdrop, the Constitution Bench, dealing with the reference in *Saurabh Chaudri,* indicated the two questions being determined by it in the following:-

> ***"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.*
>
> *** *** ***
>
> ***10.*** *The question which was initially raised in the writ petition was as to whether reservation made by way of institutional preference is ultra vires Articles 14 and 15 of the Constitution of India; but during hearing a larger issue viz. as to whether any reservation, be it on residence or institutional preference, is constitutionally permissible, was raised at the Bar."*

16.1. The first question, as to whether reservation on the basis of domicile is impermissible, was answered and disposed of by the Constitution Bench in the following passages:-

> ***"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 case a Constitution Bench held so in no uncertain terms.*
>
> ***30.*** *This Bench is bound by the said decision.*

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> ***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 area 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**."*
>
> *(underlining supplied)*

16.2. Thus, the answer by Constitution Bench to the question as to whether domicile/residence-based reservation is impermissible had been in a crisp and terse negative. In other words, the answer was in the affirmative on permissibility. For comprehension of the basis of such answer by the Constitution Bench, appropriate it would be to closely look at the two decisions referred to in the aforesaid paragraphs 29 and 31 in *Saurabh Chaudri*.

16.3. In the case of ***State of U.P. v. Pradip Tandon***[10] (referred to in the above-quoted paragraph 31 of *Saurabh Chaudri)*, the question that arose for consideration before the three-Judge Bench of this Court had been as to

[10] **(1975) 1 SCC 267**

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whether the instructions framed by the State of Uttar Pradesh in making reservation in favour of the candidates from rural areas, hill areas and Uttarakhand for admission to Medical Colleges were constitutionally valid. This Court did not approve of the reservation for rural areas for the same had been made only on the basis of the place of birth and hence, was offending Article 15 of the Constitution. However, in the said decision, the reservation made in favour of the people in hill areas and Uttarakhand area was upheld, for the same having been made for the benefit of socially and educationally backward classes of citizens, particularly when this Court found that the State had established that the people in those areas were of socially and educationally backward classes.

16.4. As noticed, in *Saurabh Chaudri*, after a short reference to the decision in ***D.P.Joshi v. State of M.P.***[11] this Court reiterated that the concept of "domicile" was not equivalent to the concept of "place of birth"; and the prohibition contained in Article 15(1) of the Constitution of India relates to any discrimination only on the basis of the "place of birth". The said decision in *D.P.Joshi* was rendered by a Constitution Bench of this Court in a writ petition under Article 32 of the Constitution of India that was filed while questioning the stipulation regarding capitation fees, as made by Mahatma Gandhi Medical College at Indore, run by the State of Madhya Bharat. The petitioner, who was a resident of Delhi and had been admitted as a student in the said Medical College at Indore, was called upon to pay a sum of Rs. 1500/- per annum as capitation fee in addition to the tuition fee and other charges payable by the

[11] **AIR 1955 SC 334**

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students of said college in general. The petitioner's grievance had been that such rules relating to the matter of fees, as in force in the college concerned, were of discrimination between the students who were residents of Madhya Bharat and those who were not, inasmuch as the residents of other States were required to pay such capitation fee in addition to the tuition fee and charges payable by all the students; and such a stipulation was offending Articles 14 and 15 of the Constitution of India. The Constitution Bench, by 4:1 majority, rejected such contentions while pointing out the significant distinction in the concepts of "domicile/residence" and "place of birth" and after finding nothing of discrimination in providing capitation fees on a particular class of students and not others. The rule in question was taken note of as under:

> *"4. …."For all students who are 'bona fide residents' of Madhya Bharat no capitation fee should be charged. But for other non- Madhya Bharat students the capitation fee should be retained as at present at Rs. 1,300 for nominees and at Rs. 1,500 for others".*
> *…..*
> *'Bona fide resident' for the purpose of this rule was defined as :*
> *"one who is -*
> *(a) a citizen of Indian whose original domicile is in Madhya Bharat, provided he has not acquired a domicile elsewhere, or*
> *(b) a citizen of India, whose original domicile is not in Madhya Bharat but who has acquired a domicile in Madhya Bharat and has resided there for not less than 5 years at the date, on which he applies for admission, or*
> *(c) a person who migrated from Pakistan before September 30, 1948 and intends to reside in Madhya Bharat permanently, or*
> *(d) a person or class of persons or citizens of an area or territory adjacent to Madhya Bharat or to India in respect of whom or which a Declaration of Eligibility has been made by the Madhya Bharat Government".*

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16.4.1. After extracting Article 15(1) of the Constitution of India[12], the Constitution Bench expounded on the difference in the concepts of "domicile/residence" and "place of birth" in the following:-

> "5*….Residence and place of birth are two distinct conceptions with different connotations both in law and in fact, and when article 15(1) prohibits discrimination based on the place of birth, it cannot be read as prohibiting discrimination based on residence."*

The Court again said:

> *"6… whether the expression used is "domicile of origin" or "domicile of birth", the concept involved in it is something different from what the words "place of birth" signify. And if "domicile of birth" and "place of birth" cannot be taken as synonymous, then the prohibition enacted in article 15(1) against discrimination based on place of birth cannot apply to a discrimination based on domicile."*
>
> *(underlining supplied)*

16.4.2. The Court further rejected the contention that there could not be a domicile of Madhya Bharat and also found force in the contention that the expression "domicile" in the concerned clauses was essentially referable to "residence". The Court said:

> *"10. Under the Constitution, the power to legislate on succession, marriage and minority has been conferred under Entry 5 in the Concurrent List on both the Union and the State Legislatures, and it is therefore quite conceivable that until the center intervenes and enacts a uniform code for the whole of India, each state might have its own laws on those subjects, and thus there could be different domiciles for different States. We do not, therefore, see any force in the contention that there cannot be a domicile of Madhya Bharat under the Constitution.*

[12] Article 15 (1) of the Constitution of India reads under:-
"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them".

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11. It was also urged on behalf of the respondent that the word "domicile" in the rule might be construed not in its technical legal sense, but in a popular sense as meaning "residence", and the following passage in Wharton's Law Lexicon, 14th Edition, page 344 was quoted supporting such a construction :

"By the term 'domicile', in its ordinary acceptation, is mean the place where a person lives or has his home. In this sense the place where a person has his actual residence, inhabitancy, or commorancy, is sometimes called his domicile".

In Mcmullen v. Wadsworth: [1889] 14 A.C. 631, it was observed by the Judicial Committee that "the word domicile in Article 63 (of the Civil Code of Lower Canada) was used in the sense of residence, and did not refer to international domicile". What has to be considered is whether in the present context "domicile" was used in the sense of residence. The rule requiring the payment of a capitation fee and providing for exemption there from refers only to bona fide residents within the State. There is no reference to domicile in the rule itself, but in the Explanation which follows, clauses (a) and (b) refer to domicile, and they occur as part of the definition of "bona fide resident".

In Corpus Juris Secundum, Volume 28, page 5, it is stated :

"The term 'bona fide residence' means the residence with domiciliary intent".

There is therefore considerable force in the contention of the respondent that when the rule-making authorities referred to domicile in clauses (a) and (b) they were thinking really of residence. In this view also, the contention that the rule is repugnant to article 15(1) must fail."

16.4.3. The Court also rejected the contention that the Rule imposing capitation fee was in contravention of Article 14 in the following:

"14. It is next contended for the petitioner that the imposition of capitation fee on some of the students and not on others is discriminatory, and is in contravention of Article 14 of the Constitution, and therefore void. The impugned rule divides, as already stated, self-nominees into two groups, those who are bona fide residents of Madhya Bharat and those who are not, and while it imposes a capitation fee on the latter, it exempts the former from the payment thereof. It thus proceeds on a classification based on residence within the State, and the only point for decision is whether the ground of classification has a

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fair and substantial relation to the purpose of the law, or whether it is purely arbitrary and fanciful.

15. The object of the classification underlying the impugned rule was clearly to help to some extent students who are residents of Madhya Bharat in the prosecution of their studies, and it cannot be disputed that it is quite a legitimate and laudable objective for a State to encourage education within its borders. Education is a State subject, and one of the directive principles declared in Part IV of the Constitution is that the State should make effective provisions for education within the limits of its economy. (Vide article 41). The State has to contribute for the upkeep and the running of its educational institutions. We are in this petition concerned with a Medical College, and it is well-known that it requires considerable finance to maintain such an institution. If the State has to spend money on it, is it unreasonable that it should so order the educational system that the advantage of it would to some extent at least enure for the benefit of the State? A concession given to the residents of the State in the matter of fees is obviously calculated to serve that end, as presumably some of them might, after passing out of the College, settle down as doctors and serve the needs of the locality. The classification is thus based on a ground which has a reasonable relation to the subject-matter of the legislation, and is in consequence not open to attack. It has been held in The State of Punjab v. Ajaib Singh and another: *1953 S.C.R. 254 that a classification might validly be made on a geographical basis. Such a classification would be eminently just and reasonable, where it relates to education which is the concern primarily of the State. The contention, therefore, that the rule imposing capitation fee is in contravention of article 14 must be rejected."*

17. From the aforesaid, it is but clear that in *Saurabh Chaudri,* the Constitution Bench found that the other Constitution Bench in *D.P.Joshi* had rejected the contention that no provision could be made on the basis of domicile/residence in relation to students taken in the medical colleges. In other words, in *Saurabh Chaudri,* this Court relied upon the decision in *D.P.Joshi* while holding that domicile/residence-based reservation was not impermissible. Standing this exposition by the Constitution Bench of this

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Court, it is difficult to conclude that domicile/residence-based reservation/preference is a concept totally overthrown and jettisoned.

18. In the impugned order, it was noticed by the High Court that the aforementioned paragraphs 29 to 32 in *Saurabh Chaudri* (supra) were sought to be relied upon by the contesting respondents (some of them being the appellants herein) to contend that preference on the basis of domicile is permissible and does not offend the constitutional scheme of things. However, after noticing such contention, the High Court switched over to the proposition of institutional preference and extensively reproduced the passages from its decision in *Dr. Chahat Bhatia* (supra). The High Court thereafter referred to the stipulations in the questioned Clause 2B of the prospectus and found basic flaws and shortcomings in the same. Having said so, the High Court proceeded to observe that even if such a reservation (i.e., domicile/residence-based reservation) was possible, it would have no hesitation in saying that the questioned Clause in the prospectus was unsustainable. Thereafter, the High Court observed that this Court in *Saurabh Chaudri* and *Dr. Pradeep Jain* has clearly laid down that preference on the basis of residence is to be deprecated in the matters of admission in PG Medical Courses; and reproduced paragraph 46 as also paragraph 1 in *Saurabh Chaudri* while observing that the conclusion in *Saurabh Chaudri* was the same as the one accorded in *Dr. Pradeep Jain*[13]. In the process of such discussion and reasoning, the High

[13] The other referred passages in the decision of the High Court relate to the issue concerning institutional preference; and the conclusion of the Constitution Bench indicative of its accord with the law laid down in *Dr. Pradeep Jain* had only been in regard to the institutional preference where the Constitution Bench finally noticed and observed as under:

> ***"67.*** *This Court may therefore notice the following:*

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Court has not even touched the contention that in view of the aforesaid answer by the Constitution Bench, preference on the basis of domicile was not entirely impermissible; and seems to have clearly missed out the import of the other answer by the Constitution Bench in *Saurabh Chaudri,* as occurring in the above-quoted paragraphs 29 to 32.

19. It appears that for the Constitution Bench in *Saurabh Chaudri* having largely approved the observation in *Dr. Pradeep Jain*'s case in relation to the question of institutional preference, the High Court has assumed that all the observations in *Dr. Pradeep Jain* stood *ipso facto* approved. True it is that in *Dr. Pradeep Jain,* a three-Judge Bench of this Court stated its total disapproval of domicile/residence-based reservation in PG Medical Courses[14]

> *(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 postgraduate 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 criterion 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 case had realized the need for institutional preference.*
>
> *(vi) No sufficient material has been brought on record for departing from this well-established admission criterion.*
>
> *(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 case 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."*

[14] In *Dr. Pradeep Jain*, total disapproval of domicile/residence-based reservation in PG Medical Courses was stated in the following:-

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but such observations in *Dr. Pradeep Jain*, when read with reference to aforesaid paragraphs 29 to 32 of the decision in *Saurabh Chaudri*, the inevitable result is that domicile/residence-based reservation has not been taken as an anathema altogether to these admission processes.

20. At this juncture, we may also briefly take note of the other decisions cited and relied upon in these matters.

20.1. The other decisions relied upon by the respondents proceeded on their own facts and the particular prescription of reservation was found invalid for its own shortcomings. So far the decisions in *Jagdish Saran*, *Dr. Pradeep Jain* and *Magan Mehrotra* are concerned, as noticed, they were rendered before the decision by the Constitution Bench in *Saurabh Chaudri*.

20.2. In *Nikhil Himthani* (supra) the State of Uttarakhand had provided that only such MBBS pass-outs from Government Colleges of Uttarakhand who

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> *"22…..We are therefore of the view that so far as admissions to post-graduate courses, such as MS, MD 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 MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same medical college 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 MBBS 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."*
>
> *(underlining supplied)*

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were admitted to the MBBS Course through Uttarakhand State PMT would be eligible, implying that the candidates applying through All India PMT would not be eligible. Further, it was also provided that MBBS pass-outs from the colleges outside State would be eligible only if they were domicile of State of Uttarakhand and selected through MBBS in other States through All India PMT or through Uttarakhand State PMT. In that context, this Court said that no preference could be given to the candidates on the basis of domicile to compete for institutional quota of the State.

20.3. In *Vishal Goyal* as also in *Dr. Kriti Lakhina* (supra) only 'a candidate of Karnataka origin' was provided to be eligible to appear for entrance test; and the expression had been defined in such a manner so as to exclude a candidate who had otherwise completed MBBS or BDS in an institution in the State of Karnataka. Such a stipulation was not approved for being in conflict with the decision in *Pradeep Jain*'s case. In *Vishal Goyal's* case, this Court observed as under:

> ***"11.*** *Mr Mariarputham is right that in* Saurabh Chaudri v. Union of India *this Court has held that institutional preference can be given by a State, but in the aforesaid decision of Saurabh Chaudri, it has also been held that decision of the State to give institutional preference can be invalidated by the court in the event it is shown that the decision of the State is ultra vires the right to equality under Article 14 of the Constitution. When we examine sub-clause (a) of Clause 2.1 of the two Information Bulletins, we find that the expression "*A candidate of Karnataka origin" *who only is eligible to appear for entrance test has been so defined as to exclude a candidate who has studied MBBS or BDS in an institution in the State of Karnataka but who does not satisfy the other requirements of sub-clause (a) of Clause 2.1 of the Information Bulletin for PGET-2014. Thus, the institutional preference sought to be given by sub-clause (a) of Clause 2.1*

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of the Information Bulletin for PGET-2014 is clearly contrary to the judgment of this Court in Pradeep Jain case."

20.4. In *Satyabrata Sahoo* (supra), there were two categories of candidates- direct and in-service. In direct category, students were to be selected strictly on the basis of inter-se academic merit, as determined by a competitive test whereas in-service was a restricted category of candidates who had put in at least three years' service in remote and difficult areas. 87 seats were available for in-service candidates and 86 for direct category. The seats in direct category were also reserved for members of SC/ST communities and also for those SC/ST candidates who had migrated from their State of origin subject to certain conditions. Under the category of direct candidates, there was an additional weightage for candidates who were in employment of Government of Odisha/Government of Odisha undertaking/Government of India/Public Undertaking located in Odisha and had worked in rural/tribal/backward areas. Additional weightage of 10% of the marks, up to maximum of 30% of the marks obtained, for each year of service rendered in remote or difficult areas was provided to the candidates applying in direct category. While dealing with such stipulations, it was pointed out that weightage was available only for in-service category, to which 50% seats for PG admission had already been earmarked. The Court was of the view that on the strength of that weightage, the encroachment or inroad or appropriation of seats earmarked for open category candidates (direct admission category) would affect the candidates who compete strictly on the basis of the merit; and there could be no

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encroachment from one category to another. Hence, the candidates of in-service category could not encroach upon the open category and vice-versa.

20.5. The aforesaid decisions proceed on their own facts but it is difficult to cull out that domicile/residence-based reservation is altogether disapproved. However, the manner of providing such domicile/residence-based reservation would always remain subject to the requirements of rationality and reasonableness; and cannot be approved if found irrational or arbitrary, as had been the matters in *Vishal Goyal* and *Dr. Kriti Lakhina* (supra).

21. As regards the decision in *Yatinkumar's* case (supra), suffice it to notice that therein, a three-Judge Bench of this Court referred to several decisions including that in *Saurabh Chaudri* and reiterated that institutional preference has been consistently approved and permitted in the PG Medical Courses. However, one of the contentions urged before the Court had been that with introduction of NEET, the purpose for which institution preference was held permissible by this Court was no longer existing. This Court took note of the scheme of these admissions and found that admissions to the PG Medical Courses, even in case of institutional preference/reservation, were to be given only on the basis of merit and the marks obtained in NEET. This decision in *Yatinkumar's* case does not relate to the core issue involved in the present matters pertaining to domicile/residence-based reservation but the significant aspect noticeable from this decision is that this Court has indubitably reiterated the position that the admissions to the PG Medical Courses on any

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quota or preference are to be made only on the basis of merits and marks obtained in NEET.

22. At this juncture and for the observations occurring in *Yatinkumar's* case (supra) as regards NEET, we may also take note of the fact that the provisions for uniform entrance examination to all Medical Educational Institutions at the undergraduate level and post-graduate level came to be inserted in the Indian Medical Council Act, 1956 ('the Act of 1956') in the form of Section 10D[15] therein by way of Ordinance No. 4 of 2016 dated 24.05.2016 which was later on replaced by the Indian Medical Council (Amendment) Act, 2016. The background in which the said provision came to be inserted had been that the Medical Council of India and the Dental Council of India issued notification dated 21.12.2010 amending the existing statutory regulations to provide for a single National Eligibility-cum-Entrance Test (NEET) for admission to the MBBS/BDS courses. The said notifications were struck down in the case of ***Christian Medical College, Vellore v. Union of India*: (2014) 2 SCC 305**. However, the said decision was recalled by the order dated 11.04.2016 in Review Petition (C) Nos. 2159-2268 of 2013. Several features related to the professional unaided minority and non-minority educational institutions as also

[15] Section 10D as inserted to the Indian Medical Council Act, 1956 reads as under:

> "10D. There shall be conducted a uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner:
>
> Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Medical College or in a private Medical College) where such State has not opted for such examination."

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the medical and dental education and healthcare systems came to be examined and pronounced upon by a Constitution Bench of this Court on 02.05.2016 in the case of ***Modern Dental College and Research Centre and Ors. v. State of Madhya Pradesh and Ors.:*** **(2016) 7 SCC 353**. That had been the background in which Section 10D came to be introduced to the Act of 1956 w.e.f. 24.05.2016. The observations in the said decision in *Modern Dental College* as also the effect of the fact that the admissions to PG Medical Courses are only based on the merit obtained in NEET also require consideration vis-a-vis domicile/residence-based reservation.

23. On the other side of spectrum, we may also observe that the generalised and blanket prohibition on domicile/residence-based reservation may not be workable in relation to the State Quota seats of PG Medical Courses. As noticed, the fundamental fact remains that all the admissions to the Medical Courses, be it All India Quota or be it the State Quota, are made on the basis of ranks obtained in NEET and not otherwise[16]. 50% of the seats are assigned to the States/Union Territories as being the State Quota seats. As noticed, different States and Union Territories have made different provisions for filling up these State Quota seats. The institutional preference, that has also been held permissible in the decisions of this Court, obviously comes into play in relation to such State Quota seats. However, even when institutional preference carries a major or prominent role in relation to such State Quota seats, varying provisions have also been made by different States/UTs with reference to domicile/residence, seemingly for the purpose of

[16] Subject to the provisions for reservations in relation to specified class of persons.

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ensuring that the candidates belonging to a particular State/UT would be available for rendering service in that State/UT after post-graduation.

23.1. The peculiar feature in relation to the State Quota seats is that if some provision as regards domicile/residence-based reservation is not made, the only other method of filling up these State Quota seats would be by way of institutional preference. This would effectively result in entire of the State Quota seats going to institutional preference alone. Now, if the entire State Quota seats are provided for institutional preference alone, the consequence would be that only the candidates of the medical institutions in the State/UT would be filling up the State Quota seats; and such a consequence may not be permissible at all.

23.2. Moreover, the unique situation in relation to UT Chandigarh is that it has only one Medical College. Thus, the dispensation in question, as provided by UT Chandigarh and its Medical College and as construed by High Court, if given effect to, would inevitably result in cornering all the State Quota PG seats by the students of that solitary Medical College alone. In the alternative, if only 50% of State Quota seats are to be given to that Medical College, the remaining 50% of State Quota seats would again fall in the pool of All India Quota because there is no other mode of filling up these seats. We find it difficult if either of such consequences could be countenanced.

23.3. It is also noteworthy that even as per the instructions issued by the examining body, the State Quota seats could be filled up by the States, *inter alia*, with reference to the domicile. In the given scenario, it is again difficult to

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accept that domicile/residence-based reservation, as provided for filling up of the State Quota open seats, be held invalid altogether.

24. Before summing up and making reference, we may observe in the passing that in regard to the case at hand, the High Court has indicated several reasons for its disapproval of the stipulations made in impugned Clause 2B of the prospectus in question. *Prima facie*, it appears that even if domicile/residence-based reservation in admission to PG Medical Courses is held permissible, the mode and modalities for its application would still require further examination because it remains questionable if such reservation could be applied by way of such stipulations, as made in the impugned Clause 2B of the prospectus in question. Having said so and for the order proposed to be passed in these matters, we do not find it necessary to enter into microscopic analysis of the sub-clauses pertaining to domicile/residence-based reservation as occurring in the impugned Clause 2B of the prospectus in question and would leave such questions open to be determined on the basis of answers to the root questions by the Larger Bench.

Summation and Reference

25. For what has been discussed hereinabove, in our view, the question as to whether providing for domicile/residence-based reservation, particularly in admission to PG Medical Courses, is constitutionally permissible as also its corollaries, including the mode and modalities of its implementation (if permissible), more particularly in relation to the State/UT having only one

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Medical College, need to be examined by a Larger Bench of this Court for authoritative pronouncement.

26. Accordingly we would propose the following questions to be examined by a Larger Bench of this Court :

1. As to whether providing for domicile/residence-based reservation in admission to “PG Medical Courses” within the State Quota is constitutionally invalid and is impermissible?

2. (a) If answer to the first question is in the negative and if domicile/residence-based reservation in admission to “PG Medical Courses” is permissible, what should be the extent and manner of providing such domicile/residence-based reservation for admission to “PG Medical Courses” within the State Quota seats?

(b) Again, if domicile/residence-based reservation in admission to “PG Medical Courses” is permissible, considering that all the admissions are to be based on the merit and rank obtained in NEET, what should be the modality of providing such domicile/residence-based reservation in relation to the State/UT having only one Medical College?

3. If answer to the first question is in the affirmative and if domicile/residence-based reservation in admission to “PG Medical Courses” is impermissible, as to how the State Quota seats, other than the permissible institutional preference seats, are to be filled up?

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27. The matters be placed before Hon'ble the Chief Justice of India for constitution of appropriate Larger Bench. The interim orders passed in these matters shall continue until further orders.

……J.
(A.M. KHANWILKAR)

……J.
(DINESH MAHESHWARI)

New Delhi
Dated: 09th December, 2019