

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

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 31, 2013

Acts Referred: Constitution of India, 1950 Article 14, 5

Citation: (2014) 2 SCT 478

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

Bench: Division Bench

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

Final Decision: Dismissed

Judgement

Augustine George Masih, J.

The present appeal has been preferred by the petitioners (appellants herein) against the judgment dated

18.7.2013 passed by learned Single Judge, vide which their claim for consideration for admission to the Post Graduate Courses under the

category of HCMS reserved quota of the State of Haryana stands rejected. The brief facts are that the appellants are serving as doctors in the

Department of Health, Haryana, and they fulfilled the eligibility requirements for consideration for admission to the Post Graduate Degree/diploma

in Medical Sciences for the Session 2013 against the HCMS seats in the Haryana quota. No objection certificates to the appellants were issued by

the competent authority for considering their case for admission against the seats reserved for HCMS quota. The appellants, in pursuance to the

notices issued by the National Board of Examinations (hereinafter referred to as "the Board"), for National Eligibility-cum-Entrance Test (Post

Graduate), 2013 (hereinafter referred to as "NEET-PG 2013") for admission to MD/MS/Post Graduate Diploma Courses 2013 Admission

Session, applied and participated in the said test held on 26.11.2012 and result thereof was declared on 31.1.2013.

2. Appellants, as per the requirement of the application form issued for NEET-PG 2013, submitted their forms, mentioning their domicile of the

State to which they originally belonged. They were required to fill in the State from where they had done their Graduation/M.B.B.S., which was

also given by them. In the result so declared for NEET-PG 2013, three lists were prepared. The first of such lists had declared the result of all

candidates on all India merit basis, the second list was showing the merit list of the candidates of the State from where they had passed their

Graduation/M.B.B.S. and the third list was based on merit of the opted domicile State list of the candidates. Since the appellants had opted the

domicile for the State of Punjab and Rajasthan from where they originally belonged, their names were included in the respective lists of those

States as per their merit.

3. Prospectus was issued by the Pandit B.D. Sharma University of Health Sciences, Rohtak (hereinafter referred to as the "respondent-

University") for admission through counselling to M.D./M.S., P.G. Diploma and M.D.S. Session 2013. Appellants submitted their application

forms for participating in the counselling for the purpose of admission under the State quota as in-service candidates (HCMS) seats but they were

not allowed to do so. Request submitted by the appellants was rejected on the ground that their names do not figure in the State merit list of

Haryana and, therefore, cannot be permitted to participate in the counselling.

4. Appellants, at this stage, had approached this Court, challenging the action of respondent No. 3-Director, PGIMS, Rohtak, who was the

Chairman of the Counselling Board. The challenge to the action of respondent No. 3 in the writ petition was based on the ground that as per the

prospectus issued by the respondent-University, the appellants were eligible in all respect for consideration of their claim for admission against the

HCMS quota seats, for which they had been issued no objection certificates by the competent authority to consider their claim against the said

quota seats. As per the prospectus, admissions have to be based upon the merit of candidates in NEET-PG 2013. Appellants, being higher in

merit in comparison to the private respondents, were required to be considered as per their merit for admission to HCMS quota seats in the

counselling held on 27.5.2013. The second ground taken was that the Board had framed three ranking list, first being the All India merit list,

second the list from the State the candidates had passed their Graduation/M.B.B.S. and the third list was from the State the candidates had opted

for their domicile. Since the appellants were originally residents of the State of Punjab and Rajasthan respectively and accordingly they had

adopted the domicile of those States. Merely because their names do not figure in the Haryana State ranking list, was not a valid ground to reject

their claim for consideration under the HCMS quota seats, ignoring the All India level ranking list. To consider the claim against HCMS quota,

there is no such condition that the candidates must have passed their M.B.B.S. from the State of Haryana or should be domicile of the State. The

only eligibility condition for consideration of the claim of a candidate against the HCMS quota is that he should have four years service as a

Medical Officer, which should include two years in rural areas, which condition is fulfilled by the appellants as they have been issued the no

objection certificates by the competent authority.

5. The third ground taken for assailing the action of the respondents is that the HCMS quota merit list has not been prepared by the Board, which

had conducted the NEET-PG 2013 test and rather the same has been prepared by the respondent-University only from the State list of Haryana,

which is illegal on the ground that the requirement for consideration under the HCMS quota is not dependent upon a candidate being domicile of

the State of Haryana as that is not a condition specified under the policy of the State of Haryana dated 23/27.12.2011, which deals with the

purpose and eligibility condition regarding higher studies (Post Graduate level) for doctors in the Department of Health. Another ground taken for

assailing the action of the official respondents is that the basic principle of merit has been given a go-bye, which would be violative of Article 14 of

the Constitution of India as the appellants admittedly are higher in All India ranking list than the private respondents and, therefore, will have

precedence for consideration for admission to the Post Grade courses against the HCMS quota seats, as the appellants fulfill the policy

requirements for eligibility as provided by the Government of Haryana dated 23/27.12.2011.

6. Learned Single Judge, while considering the pleas as raised by the appellants, had come to a conclusion that the public notice issued by the

Board dated 3.10.2012, categorically provided that the candidates desirous of having a merit position in their category are required to opt for

particular State/Union Territory as per their domicile in which they would like their candidature to be considered and the appellants having opted

for domicile for the States of Rajasthan and Punjab to be their domicile, cannot now turn around and claim that their candidature should be

considered against the seats which are earmarked for the State quota, out of which a sub-category of HCMS quota has been carved out. In this

public notice, it was clearly mentioned that the applicants have to opt for only one State/Union Territory as a domicile. It has further been observed

that the appellants herein had intentionally opted for domicile of their respective State of origin for the reason that there were 11 Medical Colleges

in the State of Rajasthan and 9 in the State of Punjab as compared to the State of Haryana, where there are only two Medical Colleges. The

appellants probably were of the view that they had more chances of getting admission in their States of origin, which they had opted than in the

State of Haryana. Having taken a conscious decision on this aspect, the appellants cannot be permitted now to claim admission against the seats

falling in the State quota of Haryana out of which 40% are kept for HCMS doctors.

7. Learned Senior counsel for the appellants submits that as per the judgment of the Supreme Court in the case of Dr. Pradeep Jain and Others

Vs. Union of India (UOI) and Others, , the Constitution of India under Article 5 recognizes only one domicile, namely, domicile of India.

Admission to the M.D./M.S. Course, on the basis of domicile of State of Haryana, thus, cannot sustain. The domiciliary requirements for

admission to the Post Medical Colleges situated within the territory of Haryana, thus, would mean residence and is intended to convey the idea of

intention to reside permanently or indefinitely. Since the appellants are working as Medical Officers in the Department of Health on regular basis,

they are to be treated as domicile for the State of Haryana and, therefore, they cannot be ousted for consideration under HCMS quota, especially

when they fulfilled all the conditions as are specified as per the Haryana Government policy dated 23/27.12.2011, particularly when considering

the said policy, no objection certificates have been issued to the appellants by the competent authority for claiming admission in M.D./M.S. P.G.

Diploma Courses against the HCMS quota seats. The appellants have truly and faithfully given their domicile of the State to which they originally

belonged as the domicile of a person does not change with his place of service or residence and, therefore, having fulfilled the requirements

mandated under the policy of the Department of Health of the State of Haryana for consideration under the HCMS quota seats, the non-

consideration of their claim, would be violative of the policy of the State itself.

8. Referring to the policy and eligibility conditions mentioned therein, the learned Senior counsel contends that the only requirement for in-service

candidates is that M.B.B.S./B.D.S. doctors will be eligible for doing Post Graduate Courses, both degree as well as diploma after completion of

four years of regular satisfactory qualifying service with two years service in rural areas. The said condition having been fulfilled by the appellants

and no objection certificates issued by the competent authority, which policy does not mandate a candidate to be a domicile of the State of

Haryana for consideration under the HCMS quota seats, depriving the benefit of the said policy to the appellants, would be illegal and not

sustainable. He submits that the condition of domicile is only for open category seats of the State quota and has no relationship or applicability to

the seats reserved for HCMS quota, which is an exclusive class in itself and admission to this quota is solely dependent and would be guided by

the policy of the State of Haryana dated 23/27.12.2011. The other conditions as specified in the prospectus would be applicable only to the open

category candidates. Referring to Clause 5 of the eligibility condition under the prospectus, Annexure P-1, he asserts that for HCMS doctors, it

has only been provided that they will be considered for admission after receipt of no objection certificates from their employer before or on the

date of first counselling as per the Haryana State Government policy framed from time to time. Referring to Clause 7, he submits that the admission

is to be made through counselling according to their merit based on NEET-PG 2013. Appellants, being higher in merit than the private

respondents, are required to be considered for counselling and allocation of seats in the HCMS quota. The list prepared by the respondent-

University basing it merely on the domicile State list as prepared by the Board is, thus, not sustainable and deserves to be set-aside and direction

be issued to the respondents to prepare a fresh HCMS quota list on the basis of policy decision of the Government of Haryana, which determines

the eligibility of the candidates and thereafter grant admissions to the candidates as per the merit list. Prayer has, thus, been made for setting-aside

the judgment of learned Single Judge and allowing the writ petition.

9. On the other hand, the learned counsel for the respondent-University submits that the eligibility of the candidates for admission to

M.D./M.S./P.G. Diploma is as per the eligibility criteria laid down in Chapter IV of the prospectus issued by the respondent-University. The

requirement, as per Clause (ii) at Sr. No. 1 is that the candidate should have passed M.B.B.S. Examination from the recognized

University/Institution situated in Haryana as a bonafide resident of Haryana or has passed M.B.B.S. Examination from any Medical/Dental

College/Institution recognized by the Medical/Dental Council of India and who/whose parents produce(s) a Haryana Resident Certificate as per

the instructions given in Annexure "A" to the prospectus. The admission procedure has been adopted strictly as per Chapter IV at Column 7 of the

prospectus.

10. The information bulletin of the NEET-PG for admission for 2013 Session, in Column 8.1 states that merit list shall be published All India-wise

and State-wise with reservation to be as per the State Government guidelines. Column 8.3 thereof, which deals with domicile, clearly states that

the guidelines of each State/Union Territory shall be applicable in respect to the seats owned/controlled by them respectively. The seats which are

to be filled, including the HCMS category seats, are of the State of Haryana quota and, therefore, the guidelines issued by the State of Haryana

with regard to domicile have to be taken into consideration. In pursuance thereof in the prospectus issued by the University, instructions for the

applicants have been given for filling up the application form and in Column No. 2 under the heading "personal information" at Page 25 of the said

prospectus, it is clearly mentioned that the candidates are required to choose their domicile State. The position with regard to this has been further

clarified in the public notice dated 3.10.2012 issued by the Board, which clearly cautioned the candidates to verify the status of domicile

policy/State policy as well as their own eligibility for the same before opting for State of domicile. Appellants having consciously opted for the

domicile other than the State of Haryana, though they being eligible for opting for domicile of Haryana State, now their change in option for State

of Haryana cannot be permitted. The application forms to be submitted by the candidates for admission to M.D./M.S./P.G. Diploma courses, as

per the prospectus issued by the respondent-University, clearly showed that they were required in Column No. 2 to fill up their rank of Haryana

State merit list, which leaves no doubt that only the State merit list candidates were to be considered for admission to the Post Graduate courses

for the seats falling in the State quota, whether open or for HCMS category. Thus, the candidates were made fully aware of the situation and were

free to choose the State as domicile, which the appellants have opted for as per their choice despite instructions issued by the Government of

Haryana published alongwith the prospectus.

11. Counsel contends that even as per the policy regarding higher studies (Post Graduate level) issued by the Government of Haryana dated

23/27.12.2011 for doctors of the Department of Health in Para (vii), it has been mentioned that after the no objection certificate is issued to the

applicant, his/her admission will be governed by the admission rules of the concerned Institution/University. The "no objection certificate" is

required not only for the HCMS doctors to be eligible for consideration under the HCMS quota but also against the open seats in the Government

Colleges of Haryana or any other State or well established and reputed private medical institutions recognized by the Medical Council of India for

sponsorship against the MD/MS reserved seats. The basic eligibility for admission to the Post Graduate against the HCMS quota seats was, thus,

domicile of Haryana, for which the appellants could have obtained and produced the certificate from their employer i.e. Director, Health Services,

Haryana, being regular employees of the Haryana Government. Since they opted for consideration for admission to Post Graduate courses in the

State of Punjab and Rajasthan instead of State quota seats in Haryana, they are only eligible for admission against 50% seats offered at the All

India level on the basis of their All India rank list but not for Haryana State quota seats, as the 40% HCMS quota seats are part of Haryana State

quota seats only, which has to be filled up as per the merit of the Haryana State rank list prepared by the Board based upon the All India merit of

NEET-PG 2013. Admissions in the HCMS Quota seats is to be done on the basis of merit list prepared by the respondent-University on the basis

of the marks obtained by the applicants as per Haryana State list of NEET-PG 2013 examination, in which list the names of the appellants do not

figure as their names are not existing on the State rank list issued by the Board.

12. Counsel for the private respondents have also reiterated the submissions as have been made by counsel for respondent Nos. 2 and 3 and have

contended that the judgment passed by the learned Single Judge is in accordance with law and does not call for any interference by this Court.

Prayer has, thus, been made for dismissal of the appeal.

13. We had heard the counsel for the appellants and the counsel for the respondents at length on 26.8.2013 and in view of the submissions

advanced by them, we considered it appropriate to implead the Board, which carried out the NEET-PG 2013 examination and the Medical

Council of India as respondent Nos. 22 and 23 respectively to have their view and, thus, notice was issued to these added respondents.

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

Council of India on this point.

15. However, counsel for the Board submits that the NEET-PG 2013 Information Bulletin dealing with reservation of seats in the Medical

Colleges/Institutions for respective categories shall be as per applicable laws prevailing in the States/Union Territories. In this regard, reference has

been made to Clause IV under the heading "Introduction" at page 5 of this Bulletin. He has also referred to the clarification issued through public

notice dated 3.10.2012 by the Board referring therein to the policy of the State concerned with regard to the domicile and the candidates to

exercise their options after verifying the status of domicile policy/State policy vis-a-vis their eligibility and claim. This clarification made it amply

clear that the candidates can opt for only one State/Union Territory as their domicile. He, on this basis, contends that the candidates having opted

after considering and weighing the pros and cons of the policy of the State, which was most beneficial to them, cannot now be allowed to change

their domicile. He has also referred to Clause 8 of the Information Bulletin, which deals with reservation and domicile, especially Clause 8.3, which

provides that the guidelines of each State/Union Territory shall be applicable in respects of seats owned/controlled by them respectively.

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

17. The first assertion of the counsel for the appellants is that they having truthfully disclosed their domicile, which according to them is the State of

their origin, they cannot be penalised for the same. Referring to the judgment in the case of Dr. Pradeep Jain's case (supra), his contention is that

there is only one domicile and that is of India and no other domicile is permissible or can be taken for admission to the Post Graduate Colleges.

18. This contention of the counsel for the appellants cannot be accepted in the light of the observations made by the Constitutional Bench of the

Supreme Court in Para 29 in the case of Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, , wherein Dr. Pradeep Jain's case

(supra) was also taken into consideration. It has been held that there is a distinction between the expression "place of birth" and the expression

"domicile", which reflects two different concepts and held that the reservation on the basis of domicile is permissible.

19. It may not be out of way to mention here that domicile, as provided under the NEET-PG 2013 information bulletin or as provided under the

prospectus, which is a sacrosanct document, issued by the respondent-University is not under challenge. None of the provisions or the criteria has

been assailed by the appellants. There being no challenge to the conditions as specified in the above two basic documents, on which the admission

to the Post Graduate courses hinges, we are left with the only option i.e. to see whether the appellants have any right based on these, which would

entitle them to the claim as made by them in the present proceedings. It needs to be added here that had the appellants opted for challenge to any

of the clause dealing with the domicile, it would have been too late in the day having participated in the selection process and accepted the terms

and conditions laid down therein.

20. If that be so, the next question which would be required to be addressed is as to whether for admission under the HCMS quota to a Post

Graduate Course, the requirement of a person being a domicile of State of Haryana is mandated?

21. For this, the answer lies in the very basic concept adopted for allocation of seats, which flows from allocation of seats to separate quota, which

has been carved out on the basis of the nature of seats. Reference in this regard can be made to Chapter III of the prospectus issued by the

respondent-University. In this, total seats in the State of Haryana for admission to Post Graduate Degree Courses are mentioned as 145, out of

which 50% are meant for All India quota, which comes to 73 and the remaining 50% seats are reserved for the State quota, which has further

been sub-classified into HCMS reserved quota, being 40% of the State quota with seats coming to 29 and the remaining 60% seats out of the

State quota is earmarked for the open merit seats i.e. 43. The general conditions applicable to the seats falling in the share of State quota has been

spelt out in Chapter IV of the prospectus issued by the respondent-University. Clause 1 lays down the requirement common to all categories and

this position is clear from Clause 2, which mandates production of the certificates as mentioned in Clause 1 at the time of counseling. Clause 5

deals with the eligibility required for HCMS doctors in addition to the other eligibility conditions. Clause 7 deals with the counselling, which has to

be according to the merit based on NEET-PG 2013 and the notifications issued by the MCI as well as DCI referred to therein. Chapter IV of the

prospectus reads as follows:-

ELIGIBILITY

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

i) is a citizen of India.

ii) has passed MBBS/BDS examination from recognized University/Institution situated in Haryana as a bonafide resident of Haryana or has passed

MBBS/BDS examination from any other Medical/Dental College/Institution recognized by the Medical/Dental Council of India and who/whose

parents produce(s) a Haryana Resident Certificate as per Govt. instructions given in Annexure A & B.

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

purpose by 31.03.2013.

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

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

2. The candidate will also submit, in original, the above mentioned certificates at the time of counseling without which admission to P.G. course

shall not be granted.

3. A student who is already admitted to any course in any institution can only be eligible to apply for any other course only after passing the first

course. An undertaking to this effect will be obtained from the candidate. Concealment of facts would invite disqualification.

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

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

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

admission.

5. HCMS doctors will be considered for admission after receipt of NOCs from their employer before or on the date of first counselling i.e.

27/28.5.2013 as per Haryana State Govt. policy framed from time to time.

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

courses in these institutions.

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

15.2.2012 as well as DCI notification dated 31.5.2012.

(Emphasis supplied by us)

22. Annexure A as referred to in Clause 1(ii) above lays down the criteria for obtaining benefit of the bonafide Haryana resident, wherein it deals

with different categories and the basis depending upon various factors for issuance of the said certificate, which has also been termed as a domicile

certificate, such as passing of qualifying examination from the State, residence in the State, employee of the Haryana State Government, employee

of Government of India posted in Chandigarh or in Haryana on deputation with the Government of Haryana, regular employee of the statutory

bodies/Corporations established by or under the Act by the State of Haryana, children/wards of retired employees, who have permanently settled

in Haryana and draw their pension, persons who were born in Haryana etc. It can, thus, be said that there is a rational criteria laid down for

obtaining the benefit of a bonafide Haryana resident which has been termed as a domicile certificate. Each candidate, who intends to take the

benefit as a domicile of the State of Haryana, has to submit a certificate obtained from the competent authority. This certificate has to be submitted

in original at the time of counselling, without which admission to P.G. Course shall not be granted. (Clause 2 above) The contention, thus, of the

learned Senior counsel for the appellants that for HCMS doctors, the condition of being a bonafide resident of Haryana, which has been termed as

a domicile certificate is not essential, cannot be accepted in the light of the above.

23. A plea has been raised that the appellants fulfill the requirement of the policy regarding higher studies (Post Graduation level) for the doctors of

the Department of Health dated 23/27.12.2011 and have been issued no objection certificates, therefore, the HCMS doctors have to be treated

as a class apart and this policy would exclusively govern the conditions of admission, which would, thus, not require a domicile certificate to be

produced.

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

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

Refer to the subject noted above.

I have been directed to invite your attention to the subject mentioned above and to state that the admission of MBBS/BDS doctors for higher

studies leading to Diploma/PG Degrees/Super Specialty Courses so far was governed by the policy circulated by the Health and Medical

Education Department vide its memo NO. 2/123/2005-1 HB-1, dated 31.3.2011. In order to build a strong resource base of specialist doctors

and to facilitate the MBBS doctors in HCMS Cadre to acquire MD/Diploma/Degree, the existing policy has been amended after wide

consultations. It has been decided to supersede the aforementioned policy dated 31.3.2011 & 05.12.2008 and issue fresh policy as follows. This

policy will come into force from academic year 2011-2012:-

I. MBBS/BDS doctors will be eligible for doing Post Graduate Course, both degree as well as Diploma, after completion of four years of regular

satisfactory qualifying service with two year rural service. Only the persons fulfilling this condition will be eligible for sponsorship against reserved

seat in PGIMS, Rohtak or other Government Institution, and against the open seats in the Government Colleges of Haryana or any other state or

well established and reputed Private Medical Education Institutions, recognized by Medical Council of India (MCI). Only 15 candidates will be

sponsored per year in these Private Institutions which are recognized by Medical Council of India (MCI) and are approved by Government of

Haryana from time to time.

Eligible persons of this category will be entitled to draw full salary as they were drawing and the period spent on the prescribed duration of course

will be treated as service for all intent and purposes. They will receive stipend, if paid by the institution and such stipend so received will be

deposited in the State Treasury. They will be required to give a certificate in this regard attested by the Institution to Director General Health

Services, Haryana.

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

including two years rural service. Such persons will have to resign from service in case they insist. However, the condition of rural service will not

be applicable in the case of member of the HMES.

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

IV. In HCMS doctors can choose to do any PG Degree in PGIMS, Rohtak. However, in case of sponsorship of seats reserved for in-service

candidate in Government Institutions or doctors going in private colleges. HCMS doctors will be sponsored only following disciplines:-

xx xx xx

Under this policy doctors will be sponsored for higher studies with full pay, subject to other conditions in respect of these aforementioned

specialties only. No HCMS/Dental doctors will be allowed to PG or any other course in correspondence distance learning mode. In case of

admission in the private institution the fee and other charges for the course or hostel etc. will be paid by the candidate himself. If any doctor after

four years of satisfactory qualifying service wishes to do PG course in any other specialty in the private institutions, he will have to seek extra

ordinary leave without pay. His service, however, will be protected for the purpose of increments, seniority and pension. Such persons will also be

entitled to stipend if available in the Institution.

V. xx xx xx

VI. Persons desirous of undertaking the Higher studies will have to obtain an NOC from the State Government before submitting their applications

to the Institutions concerned for admission in the course. Any application submitted without NOC of the competent authority will not be

considered eligible for various benefits under this policy.

VII. Person desirous of undertaking higher studies for Super Specialty/P.G. Diploma/P.G. Degree courses against the reserved as well as open

seats will be required to apply for a "No Objection Certificate" to the competent authority. No doctor can ask for an NOC for PG course as a

matter of right. However, the State Government may grant NOC subject to the following conditions:-

(i to x) xx xx xx

VIII to XI. xx xx xx

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

(Underlining is ours)

25. It is not in dispute that the appellants as per the above policy fulfill the requirement, which rendered them eligible for consideration to the seats

earmarked for the HCMS quota. However, in the light of the eligibility criteria laid down in the prospectus, which has been referred to above,

requirement of the domicile certificate is an essential condition for consideration under the State quota seats. Mere issuance of a no objection

certificate would not be enough, thus, for a candidate to be considered under the HCMS quota seats. It may, however, be added that all HCMS

doctors, who are desirous of undertaking higher studies against the reserved as well as open seats, are required to apply for no objection

certificate to the competent authority, as is apparent from clause VII reproduced above. This obviously means that every HCMS doctor desirous

of undertaking higher studies is mandated to obtain a no objection certificate, irrespective of the fact whether he seeks admission against the

reserved seats or open seats.

26. Having held that the requirement of a domicile certificate as a bonafide resident of Haryana, as per the Government instructions provided for

under Annexures A and B attached to the prospectus under Clause I (ii) of Chapter IV as mandatory for consideration under the State quota

seats. The question would be whether the appellants could have opted for Haryana domicile?

27. The answer to this has to be in the positive, for the reason that the appellants admittedly were eligible as per the requirements provided for in

Clause 1(ii) of Chapter IV of the prospectus. They further fulfilled the requirement of Clause 5 of Chapter IV as they had obtained the no

objection certificates from their employers. The information bulletin of NEET-PG 2013 under Clause 1 "Introduction" sub-clause (IV) at Page 5

provides with regard to reservation as follows:-

IV. The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union

Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of marks obtained in

National Eligibility-cum-Entrance Test and candidates shall be admitted to Post Graduate courses from the said merit lists only.

28. This position has been further clarified under Clause 8 dealing with reservation and domicile at Page 20. Relevant Clauses are 8.1 and 8.3 for

the purpose of the present case, which read as follows:-

Reservations and Domicile:-

8.1 As per the PG Medical Education Regulations, Merit list shall be published State wise & All India list. Reservations as per Government of

India Guidelines/State Government Guidelines/PG Medical Education Regulations/rules & Regulations shall be provided for Scheduled Castes

(SC), Schedule Tribes (ST), Persons With Disabilities (PWD), Other Backward Classes (OBC) at eligible class of Institutions/Colleges.

8.2 xx xx xx

8.3 Domicile - Guidelines of each State/Union Territory shall be applicable in respect of the seats owned/controlled by them respectively.

29. A perusal of the above would show that as regards a domicile, it was mentioned that guidelines of each State/Union Territory would be

applicable in respect of seats owned/controlled by them. Since many candidates enquired about their eligibility for determination of the State merit,

a clarification regarding domicile and merit list, relating to All India and State merit was issued through a Public Notice dated 3.10.2012, relevant

part of which reads as follows:-

National Board of Examinations

(NEET-PG)

Dated: October 3rd, 2012 PUBLIC NOTICE

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

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

In reference to the National Eligibility-cum-Entrance Test-Post Graduate (NEET-PG) (Scheduled to be held from 23rd November-6th December,

2012); Applicant candidates have enquired regarding their eligibility for the determination of state merit and admissions to institutions of Armed

Forces Medical Service (AFMS), Ministry of Defence, Government of India.

The above referred issues are clarified as follows:-

1. All India Merit List:- All the applicants for NEET-PG examination shall be given a percentile based merit rank position as per the criteria

prescribed in the PGME Regulations (duly amended) and indicated in Information Bulletin.

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

a. Based on state of Graduation/MBBS: Each candidate shall be assigned a state level percentile merit rank in the state merit list from the

State/Union Territory of his/her graduation.

In respect of candidates who have qualified their graduation degree from foreign medical institutions their state wise merit position cannot be

determined and accordingly shall not be issued.

b. Based on Domicile Criteria: (In respect of those candidates who have a domicile for a particular State/UT): Some states have a policy of

allowing holders of bonafide domicile to pursue post graduation (MD/MS/PG Diploma) at respective institutions in that state, despite of the

candidates having their graduate qualification from other states/Union Territories/foreign medical institutions.

Candidates desirous of having a merit position under this category are required to opt for the particular state/Union Territory as their domicile in

which they would like to be considered.

However, before making such claim the candidates are required to verify from the respective state governments and the applicable rule position, if

at all they will be considered for admission to Post Graduate seats based on domicile criteria.

No claim or query in this regard shall be entertained by NBE/MCC/MOHFW or any other counselling or admission granting authority or any legal

rights shall arise in favor candidate. If Government/Counseling authority/Admission granting authority does not entertain the claim of candidate for

grant of admission to PG seats on the basis of domicile criteria.

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

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

xx xx xx

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

state of domicile.

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

NEET PG Portal.

(Underlining is ours)

30. When we go through the above clarification, it is clear that there would be one All India merit list and two State merit lists, one based on the

State of Graduation/M.B.B.S. and the other based on domicile criteria. Under this head, it was clearly mentioned that States have their own

policies and allow holders of bonafide domicile to pursue Post Graduation in their Institutions despite the candidates having their Graduation

qualification from other States/Union Territories/Foreign Medical Institutions. Those candidates, who were desirous of having a merit position

under this category were required to give an option for that particular State/Union Territory to be their domicile, where they would like their

candidature to be considered. Candidates were made aware of the fact that they should verify the applicable rule position of the respective State

Governments to check their eligibility, where they would like their candidature to be considered for admission to the Post Graduate seats based on

the domicile criteria. It was specified that a candidate could opt for only one State/Union Territory as his/her domicile. In the concluding part of the

notice, caution was again issued to the candidates to check their eligibility before opting for the State of domicile and after registration, there can be

no change of the State of domicile. This clearly spells out that a candidate, who is eligible as per the applicable rules and instructions of the State

Government in more than one State, had an option and choice of choosing the State domicile, where he would like his candidature to be

considered but that choice could be under this domicile category of one State only.

31. The appellants were made well aware of the terms and conditions with an option to choose the choice of the State based on domicile criteria.

Once the appellants having chosen States of Rajasthan and Punjab, where they would like their candidature to be considered under the category of

domicile, they cannot now take a U-turn and assert consideration for admission under the seats, which are reserved for the State of Haryana, what

to say of HCMS quota, which is a sub-category providing for reservation for in-service candidates. As per the State of their choice for

consideration under the domicile criteria, their names figured in those State lists and having failed to obtain the seat in those States, the appellants, it

appears, have now turned around to assert their rights on the seats, which are reserved for the Haryana State domicile candidates, which is not

permissible as per the conditions referred to in above.

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

as follow:-

This argument of the learned counsel for the petitioners cannot be accepted because a public notice was issued on 3.10.2012 in which it was

categorically provided that the candidates desirous of having a merit position in their category are required to opt for a particular State/UT as their

domicile in which they would like to be considered. It is also provided that the candidate can opt for only one State/UT as domicile. It is not in

dispute that the petitioners have filled in their domicile State/UT as Rajasthan or Punjab instead of Haryana. Had the petitioners opted for the

domicile for the State of Haryana, the NEET would have prepared their State rank on the basis of domicile viz-a-viz other candidates, who had

opted for domicile of State of Haryana and the petitioners would have been allowed to compete with them. But in the present case, the petitioners

have opted the domicile of their respective States to which they belong, namely, Rajasthan or Punjab and accordingly their State rank of the

domicile State has been prepared, as an example, in the case of one of the petitioner namely, Ranjeev Beniwal, his All India Rank is 19303, State

Rank 1 pertaining to the State from which he had graduated is 1665 and State Rank 2, which he opted as a State of his domicile, is 1215. There is

no State rank of his domicile of State of Haryana, therefore, respective merit for the candidates of the State of Haryana domicile is not available for

the purpose of considering the petitioners as a candidate of State of Haryana domicile and accordingly, the petitioners were not allowed to join the

counseling. Besides this, prima facie, it appears that the petitioners had opted for domicile of respective States for a purpose because there are 11

Medical Colleges in the State of Rajasthan and 9 Medical Colleges in the State of Punjab as compared to the State of Haryana where there are

only 2 Medical Colleges, therefore, by opting for the State of Rajasthan and Punjab, petitioners, who belong to those States, were having much

more chances of getting admission than the State of Haryana and it appears that when they could not get admission in their respective States, an

attempt has been made to take admission in the State of Haryana in 40% quota, provided for the in-service HCMS Doctors.

Thus, it is needless to mention that once there was a public notice issued on 3.10.2012 calling upon the candidates to opt for a particular State as

their domicile with a condition that the candidate can opt for only one State and the petitioners have opted the States other than the State of

Haryana, they cannot turn around to contend that they have candidly opted the State to which they belong and were not aware of this fact that they

would not be considered for counseling for claiming the 40% quota meant for in-service HCMS Doctors.

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

call for any interference.

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