

Before Mahesh Grover & Rajbir Sehrawat, JJ.

ROUSHALI KUMAR AND OTHERS—Petitioners

versus

STATE OF PUNJAB AND OTEHRS—Respondent

CWP No. 8825 of 2018

May 9, 2018

A. Constitution of India, 1950—Art. 14—Admission in PG—Institutional preference—Through notification, institutional preferences been made—University-wise 50% of seats available under State Quota in Universities been given through first preference to candidates passing their qualifying MBBS Exam from those Universities—Nothing wrong, illegal or unconstitutional in course of action adopted by respondents—Same not violative of Article 14 of Constitution

Held, that the Supreme Court as far back as in *D.N. Chanchala and others v. The State of Mysore and others*, 1971 AIR (SC) 1762 upheld the University-wise distribution of seats in government Colleges and held the same to be not violative of Article 14 of the Constitution of India.

(Para 12)

B. Constitution of India, 1950—Art. 14— Admission in PG PG Institutional preference—Every adverse consequence not legal injury—Provisions under challenge have to be tested through constitutional prism and not on basis of perceived grievance of petitioners—Once University wise institutional preference upheld by Apex Court then adverse effects upon such candidates; not belonging to that University; are bound to occur—Grievance cannot be raised to level of constitutional injury bound to occur.

Held, that the petitioners may be having some grievance of being ignored in the process of admission, however, as has been held above; the grievance is not having a constitutional perspective to make the same sustainable. Every grievance may not necessarily have a legal remedy for a citizen. Since the provisions of the prospectus have been found to be constitutionally sustainable, therefore, any perceived legal injury or grievance of the petitioners is immaterial for the purpose of adjudication.

(Para 20)

Gurminder Singh, Senior Advocate with Ramanpreet Singh, Advocate, *for the petitioners* (in CWP No.8825 of 2018) and Surinder Garg, Advocate, *for the petitioners* (in CWP No.8327 of 2018).

Anu Pal, AAG, Punjab.

Savi, Advocate, for respondent No.3.

S.S. Brar, Advocate, for respondent No.4 (in CWP No.8825 of 2018).

RAJBIR SEHRAWAT, J.

(1) This order shall dispose of two writ petitions i.e. CWP No.8825 of 2018 – ***Roushali Kumar and others v. State of Punjab and others*** and CWP No.8327 of 2018 – ***Dr. Parvartan Deep Singh and others v. State of Punjab and others***.

(2) In CWP No.8825 of 2018, challenge has been laid to the notice/ clarification dated 09.03.2018 issued by the Registrar, Baba Farid University of Health Sciences, Faridkot. The contents of this clarification which; is attached as Annexure P7; read as follows:-

“1) In the meeting held on 22.02.2018 in O/O PSMER, Government of Punjab, Chandigarh, a point was raised regarding reservation of 50% seats for the State quota. It was clarified that 50% of seats are to be filled by way of all India seats where candidates from all over the country can apply. Rest 50% of seats are of State quota and available to be filled by way of institutional preference from the students who have passed their qualifying examination from Baba Farid University of Health Sciences. It was further clarified that alongwith Baba Farid University of Health Sciences, the candidates who have passed their qualifying examinations from other Universities established by statues of State of Punjab and in the State of Punjab shall also be eligible under this category. However, it was also clarified that institutional preference will first be given to a candidate of the respective university. For example, if a student has passed out from Baba Farid University of Health Sciences, Faridkot or Guru Nanak Dev University, Amritsar or Punjab University, Chandigarh or Punjabi University, Patiala (in terms of Section 59(i)(b) of Baba Farid University of Health Sciences Act, 1998) then that

student will get first preference in colleges affiliated to Baba Farid University of Health Sciences. Similarly this will be applicable to other Universities like Adesh University or SGRD University etc. It was also clarified that seats of Government quota in private Medical/ Dental Colleges will be filled by way of Institutional preference as already clarified above.

2) Vide Memo No.26/12/94-252/1185391/1 dated 04.03.2018, Department of Health and Family Welfare, Government of Punjab has stated that for in-services candidates (PCMS/PCMS Dental) incentive shall be given up to 30% of total marks obtained in NEET PG 2018 for admission to PG Diploma/ Degree courses.”

(3) To lay the factual basis for the challenge, the petitioners have pleaded that the petitioners had taken admission to the MBBS Course in 2012 through the admission process conducted by Baba Farid University of Health Sciences only. Adesh Institute of Medical Sciences and Research, Bathinda; was one of the affiliated Colleges under Baba Farid University at that time. As per their merit, they had taken admission in Adesh Institute of Medical Sciences and Research, Bathinda. However, subsequently vide Act No.06/2012, State of Punjab enacted 'Adesh University Act, 2012' whereby Adesh University was established as a private University and Adesh Institute of Medical Sciences and Research was affiliated to this private University as a constituent College. Now the petitioners have already completed their MBBS Course. They were desirous of getting admission to PG (Medical) Courses after completing their MBBS Course. To carry out the process of admission to PG (Medical Courses), the National Board of Examination had conducted National Eligibility-cum-Entrance Test (Post Graduate) (for short, 'NEET-PG') Examination on 07.01.2018. The notice issued for NEET-PG-2018 provided that 50% seats shall be filled up on All India basis and 50% seats shall go to State Quota; which shall be filled as per the conditions prescribed by the State Government; but on the basis of merit of the candidates of the NEET-PG Exam. Government of Punjab, Department of Medical Education and Research; issued a notification dated 25.01.2018 vide which Baba Farid University of Health Sciences, Faridkot, respondent No.3, was authorised to conduct centralised counselling for admission to 50% State quota seats in government colleges and all seats in private medical/ dental colleges, including private/ deemed universities and

Minority Institutions of the State of Punjab; on the basis of merit of NEET- PG–2018 and in terms of the procedure laid down by MCI/DCI. This notification provided for distribution of the seats in government institutions as follows:-

“15. Distribution of Seats in Govt. Institutions (Govt. Medical/ Dental College, Amritsar & Patiala, GGS Medical College, Faridkot).

- I. In the Govt. Institutions, 50% of the total seats shall be filled by the Government of India at All India level, and remaining 50% seats shall be filled at the State level as State Quota seats.
- II. 50% seats of the State Quota seats shall be reserved by way of Institutional Preference, for general category candidates who have passed their qualifying examination from Baba Farid University of Health Sciences, Faridkot.
- III. For In-service candidates (PCMS/PCMS Dental) incentive shall be granted upto 30% of total marks obtained in NEET PG 2018 as per the provision of Post Graduate Medical Education Regulations 2000 of MCI.
- IV. Eligibility criteria:-
 - A. For in-service Regular PCMS/ PCMS (Dental) doctors:-**

a) The Eligibility requirements for grant of incentive shall be as under:-

- i. Regular PCMS/ PCMS (Dental) employee
- ii. Has completed 4 full years (48 months) service in very difficult (Category-D) area or 6 full years (72 months) service in difficult (Category C) area or an appropriate combination of both. In case of candidates who have completed 5 full years (60 months) of service (as on 01-01-2012), they should have completed 2 full years (24 months) of service in most difficult areas or 3 full years (36 months) of service in difficult areas. Very difficult (Category D)/ Difficult (Category C)/Most Difficult/ Difficult area, as the case may be, shall be as defined by Department of Health & Family Welfare, Government of Punjab.

- iii. RMOs once they are selected in PCMS/PCMS (Dental), will be given benefits of rural service rendered by them as RMOs under Zila Parishad.
 - iv. Has cleared the probation period
 - v. Has Good service record
 - vi. Has no vigilance/ departmental/disciplinary inquiry pending against him/her.
 - vii. Will have 10 years of service left after completion of the course.
- b) The period of rural service shall be computed as on 31st March, 2018.
 - c) Adhoc service rendered in respective category will be counted for the purpose of computing the stipulated period.
 - d) PCMS/ PCMS (Dental) in service candidates will submit along with the application a certificate regarding length of service, length of rural service, number of years of service left after completion of PG course & that no department/ vigilance inquiry is pending against the candidate.
 - e) All PCMS/ PCMS (Dental) doctors who are selected for admission to post graduate courses shall have produce a No Objection Certificate from Department of Health & Family Welfare, Government of Punjab.
 - f) All in service doctors shall have to submit a bond of Rs.50 lakhs to serve the Punjab Government for a period of 10 years after completion of Post Graduate degree course or bond of Rs.25 lakhs to serve the Punjab Government for a period of 6 years after completion of Post Graduate diploma course. If the candidate fails to do so he/she shall have to deposit the money with the Government.

B. For State Quota candidates [except in-service PCMS/ PCMS (Dental) candidates]:-

- a) Any candidate in State Govt. employment (other than PCMS/PCMS Dental) shall produce No Objection Certificate from his/her employer along with the

application for the counselling and shall not be given any incentive of marks for service rendered.

b) Candidates selected in State Quota shall get fixed emoluments/ stipend as determined by the Punjab Government from time to time for the complete course, subject to the following conditions:-

- i. The candidate is to submit a bond of Rs.15 Lakhs to serve the Government of Punjab for a period of two years after completion of PG. This clause will not be applicable in case the offer is not given by the Government of Punjab within a period of one year of passing of the postgraduate examination.
- ii. The candidate will inform the Government of Punjab that he/she has passed the postgraduate examination.
- iii. Failure to serve the Government of Punjab for a period of two years will lead to deposition/ recovery of bond money by the Government of Punjab.

iv For All India quota candidates

All India quota candidates shall submit a bond of Rs.10 Lakhs to serve the State of Punjab for one year after completion of Post Graduate course. All other conditions shall remain the same, as for State Quota candidates.

v Reservation

- | | |
|-----------------------------|-----|
| i. Scheduled Caste | 25% |
| ii. Backward class | 10% |
| iii. Physically handicapped | 3% |

The reservation of physically challenged persons shall be as per the provision of Right of Persons with Disability Act-2016.

Note:1. The availability of seats for reservation shall be as per hundred point roster being maintained category wise/ subject wise/ institution wise.

Note:2. All the certificates shall be as per latest instructions issued by the Government of Punjab.

VI Fee structure for the Government Institutions for

the year 2018 is as under (as per notification No.5/14/2015- 5HB III/1040 dated 21.05.2015):-

Sr. No.	Name of Course	Year	Fee per year (Rs. In lacs)
1.	MD/MS (Clinical)/MDS	1 st Year	1.25
		2 nd Year	1.5
		3 rd Year	1.75
2.	MD/MS (Basic Sciences)	Ist Year	1.00
		2 nd Year	1.10
		3 rd Year	1.20

Subject to change by way of notification.”

Likewise, the distribution of seats for private institutes was provided as under:-

“16. I. Distribution of seats in Private Institutions:-

Govt. Quota Seats - 50%

Management/ Minority Quota Seats – 50% (including 15% NRI Quota)

II. Reservation in Private Institutions:-

a) The Governor of Punjab is further pleased to reserve, by way of institutional preference 50% available seats shall be for General category candidates who have passed their qualifying examination from Baba Farid University of health Sciences, Faridkot.

b) The reservation shall be as follows:

- i Scheduled Caste 25%
- ii Backward class 10%
- iii Physically handicapped 3%

NOTE: (i) Distributions of seats under Management Quota/ Minority Quota for admissions to Minority Institutions shall be fixed by respective institutions in accordance with applicable laws.

(ii) The reservation of physically challenged persons shall be as per the provision of Right of Persons with Disability Act-2016.

(iii) The availability of seats for reservation shall be as per hundred point roster being maintained category wise/ subject wise/ institution wise.

(iv) All the certificates shall be as per latest instructions issued by the Government of Punjab.”

(4) Accordingly, the respondent No.3, Baba Farid University of Health Sciences had issued the prospectus containing the conditions of the eligibility and procedure for counseling etc.

(5) It was pleaded that as per the notification dated 25.01.2018, the seats were reserved by way of 'Institutional Preference' only for the candidates who have passed their qualifying MBBS Exam from Baba Farid University. However, subsequently the impugned clarification dated 09.03.2018 was issued whereby though the candidates passing their MBBS Exam from private universities/ institutes were also made eligible to compete in the category of institutional preference, however, it was stipulated in this clarification that while considering the candidates, they shall be given first preference in their respective Universities. For example, the candidates passing their MBBS Exam from Baba Farid University shall be given first preference in the seats available for institutional preference in Baba Farid University/Colleges. Likewise the candidates passing their MBBS Exam from the private Universities/ private institutions shall be given first preference in their respective Universities/ Institutes. The petitioners are aggrieved of the fact that the candidates passing MBBS Exam from Baba Farid University/ affiliated Colleges have been given first preference in the seats available in Baba Farid University and its constituent Colleges. Their grievance is that for the seats available in institutional preference category, the petitioners should be treated at par with those candidates who have qualified MBBS Exam from Baba Farid University. One more fact which is to be noticed in this case is that Government of Punjab, Department of Medical Education and Research had issued another notification dated 02.04.2018 whereby it was clarified that inservice PCMS Doctors; working in the Department of Health and Family Welfare, Government of Punjab, will be considered for the State Quota seats irrespective of the fact whether they have passed a qualifying exam from Baba Farid University of Health Sciences, Faridkot or from any other University located in the State of Punjab or any other University located outside the State of Punjab. The contents of this notification are as follows:-

“GOVERNMENT OF PUNJAB
DEPARTMENT OF MEDICAL EDUCATION &
RESEARCH (HEALTH-III BRANCH)

NOTIFICATION

No.5/26/2016-5HB-III/1508

Dated: 2-4-2018

SUBJECT: Admission to Post Graduate Degree/Diploma courses and Six month training in Ultrasonography in the Health Sciences Educational Institutions (Medical/Dental) in the State of Punjab- Session 2018.

In partial modification of the Notification No.5/26/2016-5HB-III/557 dated 25.01.2018, all PCMS doctors working in Department of Health & Family Welfare, Government of Punjab whether they have passed their qualifying examination from Baba Farid University of Health Sciences, Faridkot or any other University located in State of Punjab or any other University located out side the State of Punjab, they will be considered under category listed at clause- 15(II) of the Notification as IP candidates. The Clause-15(II) stand amended accordingly.

Dated, Chandigarh
the: 02-04-2018

Sanjay Kumar, IAS
Principal Secretary to the Govt.
of Punjab, Department of
Medical Education & Research”

(6) In CWP No.8327 of 2018, the petitioners have challenged clause 15(II) of the prospectus {wrongly numbered as Clause 14(II)} whereby 50% seats of the State Quota in the Post Graduate Degree/ Diploma Courses in Government Institutions in the State of Punjab have been kept reserved by way of institutional preference for general category candidates who have passed their qualifying exam from Baba Farid University of Health Sciences, Faridkot. Their plea is that the petitioners have passed their MBBS Exam from State of Karnataka, Maharashtra and Odisha. Therefore, all the petitioners have passed their exam from the Medical Colleges situated outside the State of Punjab. However, all the petitioners are residents of the State of Punjab. Being domicile of the State of Punjab, they are entitled to compete for State Quota seats. But all the State Quota seats have been reserved by the State for institutional preference. It is their grievance that all the seats

(except the seats reserved for Scheduled Castes or Tribes) have been reserved by way of institutional preference. Hence, all the candidates who have not passed their MBBS exam from Punjab have been excluded from the consideration for admission even against the seats of the State Quota of Punjab. This action of State is arbitrary and unconstitutional.

(7) To counter the claim of the petitioners, the State of Punjab filed short reply by way of affidavit in CWP No.8825 of 2018. It was contended in the reply that University is following the judgment of Hon'ble the Supreme Court of India rendered in *Pardeep Jain versus Union of India*¹ wherein it was held that reservation on the basis of institutional preference should not in any event exceed 50% of the total number of open seats available for admission to Post Graduate Courses. Still further, it has been held in that judgment that the institutional preference is to be given to the candidates who have passed the examination from the same institute or the University. The notification/clarification issued by the State and the respondent- University in this regard is in strict compliance of the judgment of Hon'ble the Supreme Court to provide benefit of the institutional preference to the candidates only in their respective Universities/ Institutes; from where they have passed their qualifying MBBS Exam. The petitioners have passed their qualifying exam from different Universities where the examining bodies are different than the Baba Farid University of Health Sciences. The candidates coming from both different Universities cannot be considered at par and hence the institutional preference can be given and has been provided to be given to the candidates passing qualifying exam from the same University. It is further contended that the candidates passing their qualifying exam from Adesh University of Medical Sciences and Research, Bathinda have not been ignored altogether; even in the seats available in Baba Farid University or its affiliated Colleges. However, such candidates have been given second preference in the seats available in Baba Farid University and its affiliated Colleges. Just as the students passing out from Baba Farid University have been given first preference in their University, the students passing from Adesh University have been given first preference for admission in their own University. In Adesh University, the candidates passing MBBS Exam from Baba Farid University have been given the second preference. It is pleaded by the State that there is nothing wrong or illegal in the course adopted by the authorities for

¹ 1984(3) SCC 654

admission to PG Medical Courses. Still further, the respondent- State has replied that if the prayer of the petitioners is allowed, it will amount to reservation on the basis of domicile which has been held to be unconstitutional by Hon'ble the Supreme Court in the judgment rendered in *Pardeep Jain's case (supra)*. Accordingly, the claim of the petitioners in both the petitions is contested by the State.

(8) Respondent No.3- Baba Farid University of Health Sciences, Faridkot also filed reply through its Registrar. Besides, reproducing provisions of the notification dated 25.01.2018 and 09.03.2018, it is pleaded by the respondent- University that a perusal of the provisions of the notifications make it clear that there is 50% reservation for institutional preference within the State Quota as decided by the legislative body. However, it is clarified by the respondent- University that against its own seats, the respondent- University offers institutional preference to the students who have passed qualifying exam from Baba Farid University of Health Sciences only. The students passing from other University in the State of Punjab would be entitled to the institutional preference in the same University from which they have passed their qualifying MBBS Exam. Accordingly, it is pleaded that the petitioners in the present case are entitled to institutional preference in Adesh University, Bathinda. However, still they are given second preference against the vacant seats left-out in Baba Farid University of Health Sciences. Accordingly, the admissions are being made by the respondent- University.

(9) While arguing the case, the learned counsel for the petitioners in CWP No.8825 of 2018 submitted that by prescribing the University-wise institutional preference, the respondents have disregarded the merit. If the provision as contained in prospectus is carried out; that would result in a situation where the candidates passing qualifying exam from Baba Farid University but otherwise lower in NEET-PG-2018 merit would be getting admission on the seats available in Baba Farid University and its affiliated Colleges, whereas, the candidates passing from Adesh University or other private Universities/ Institutes in the State of Punjab, though may be having higher merit in NEET-PG-2018 would not be getting admission, since they have been given only second preference. His further submission is that since institutional preference is only a "Preference", therefore, it has to be only a preference amongst two persons otherwise having equal merit. The 'preference' cannot be made basis for discarding the claim of another person who otherwise is higher in merit. Counsel has

relied upon the judgment of Hon'ble the Supreme Court rendered in *The Secretary, Andhra Pradesh Public Service Commission versus Y.V.V.R Srinivasulu and others*² to contend that it is only when some candidates are found equal in merit on the basis of all other things that the person holding preferential qualification would be selected first. Provision giving preference cannot be used to eliminate the candidates at the threshold or to disentitle them from staking their claim in the presence of the person for whom preference is provided for. Still further, learned counsel has submitted that the State Government has provided for reservation of 50% seats on the basis of institutional preference in the original notification issued by them. However, by issuing notification dated 09.03.2018, the State has created a reservation within reservation, which is not permissible. To support his contention, learned counsel for the petitioners has relied upon the judgment of this Court rendered in case *Attar Singh Dhoor versus State of Punjab*³. Hence, it is submitted that the candidates passing their exams from any University in Punjab should be treated at par and they should be considered as per their NEET-PG merit along with candidates passing their qualifying exam from Baba Farid University.

(10) Learned counsel for the petitioners in CWP No.8327 of 2018 submitted that since 50% of the seats are meant for State Quota, therefore, all these seats could not have been reserved by way of institutional preference. Since the petitioners are domicile of the State of Punjab therefore, they have to be considered against the State Quota seats of the State of Punjab; despite the fact that they might have passed their MBBS qualifying exam from the University outside the State of Punjab.

(11) On the other hand, the learned counsel for the State has submitted that the University-wise reservation has already been upheld by the Apex Court in a number of judgments. Further it is argued that reservation cannot be claimed by the petitioners only on the basis of the fact that they are residents/ domicile of the State of Punjab. The admission procedure is being carried out strictly in accordance with the law as laid down by the Apex Court.

(12) After having heard learned counsel for the parties and perused the record, we find that the claims of the petitioners in both the petitions are not supported by sanction of law. A bare perusal of the

² 2003 (2) S.C.T. 920

³ 2006 (3) RSJ 673

impugned notification dated 09.03.2018 shows that vide this notification, the University has clarified the earlier notification dated 25.01.2018. In the original notification, all the State Quota seats were meant for institutional preference and were reserved for the students of Baba Farid University only. Against these seats, the students passing their qualifying MBBS Exam even from any other University situated within the State of Punjab were not eligible. However, vide the impugned clarification, the State Government and the respondent University have made the process of admission more commensurate with the Constitutional norms. Through the impugned notification, the institutional preferences have been made University-wise. The candidates who have passed their qualifying MBBS Exam from Baba Farid University have been given first preference in the seats available in Baba Farid University and its affiliated Colleges. Similarly, the seats available under State Quota in private Universities have been given through first preference to the candidates passing their qualifying MBBS Exam from those private Universities. However, if any seat is left vacant in one University, then, the candidate from other University has also been made eligible by way of second preference. We do not find anything wrong, illegal or unconstitutional in the course of action adopted by the respondents through the impugned notification. The issue of University-wise institutional preference is no more res-integra. The Supreme Court as far back as in *D.N. Chanchala and others versus The State of Mysore and others*⁴ upheld the University-wise distribution of seats in government Colleges and held the same to be not violative of Article 14 of the Constitution of India. The Apex Court also considered the issue of inter-se merit of the candidates in the admission process and held as under:-

“The three universities were set up in three different places presumably for the purpose of catering to the educational and academic needs of those areas. Obviously one university for the whole of the State could neither have been adequate nor feasible to satisfy those needs. Since it would not be possible to admit all candidates in the medical colleges run by the Government, some basis for screening the candidates had to be set up. There can be no manner of doubt, and it is now fairly well settled, that the Government, as also other private agencies, who found such centers for medical training, have the right to frame

⁴ 1971 AIR (SC) 1762

rules for admission so long as those rules are not inconsistent with the university statutes and regulations and do not suffer from infirmities, constitutional or otherwise. Since the universities are set up for satisfying the educational needs of different areas where they are set up and medical colleges are established in those areas, it can safely be presumed that, they also were so set up to satisfy the needs for medical training of those attached to those universities. In our view, there is nothing undesirable in ensuring that those attached to such universities have their ambitions to have training in specialised subjects, like medicine, satisfied through colleges affiliated to their own universities. Such a basis for selection has not the disadvantage of district wise or unit wise selection as any student from any part of the state can pass the qualifying examination in any of the three universities irrespective of the place of his birth or residence. Further, the rules confer a discretion on the selection committee to admit outsiders upto 20 per cent of the total available seats in any one of these colleges, i.e. those who have passed the equivalent examination held by any other university not only in the State but also elsewhere in India. It is, therefore, impossible to say that the basis of selection adopted in those rules would defeat the object of the rules as was said in Rajendran's case or make possible less meritorious students obtaining admission at the cost of the better candidates. The fact that a candidate having lesser marks might obtain admission at the cost of another having higher marks from another university does not necessarily mean that a less meritorious candidate gets advantage over a more meritorious one. As is well known, different universities have different standards in the examinations held by them. A preference to one attached to one university in its own preference are to be found in various universities. Such a system for that reason alone is not to be condemned as discriminatory, particularly when admission to such a university by passing a qualifying examination held by it is not precluded by any restrictive qualifications, such as birth or residence, or any other similar restrictions. In our view, it is not possible to equate the present basis for selection with those which were held invalid in the aforesaid two

decisions. Further, the Government which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission in its own colleges and to decide the sources from which admission would be made, provided of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. So long as there is, no discrimination within each of such sources, the validity of the rules laying down such sources cannot be successfully challenged. (see *Chitra Ghosh v. Union of India, 1970-1 SCC 413 at p.418*). In our view, the rules lay down a valid classification. Candidates passing through the qualifying examination held by a university form a class by themselves as distinguished from those passing through such examination from the other two universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of candidates who would naturally look to their own university to advance their training in technical studies, such as medical studies. In our opinion, the rules cannot justly be attacked on the ground of hostile discrimination or as being otherwise in breach of Article 14.”

(13) This streak of judgments continued through the judgment of Hon'ble the Supreme Court rendered in *M.R. Mini (Minor) represented by her guardian and father M.P. Rajappan versus State of Kerala and another*⁵, *Dr. Jagdish Saran and others versus Union of India and others*⁶ and culminated in *Pardeep Jain's case (supra)*; which upheld the reservation on the basis of institutional preference but put the limit of 50% of total number of open seats available for admission to PG Courses. It was specifically held in *Pardeep Jain's case (supra)*, that institutional preference is to be given to the candidates who have passed exam from the same Institute or University. Hence, the impugned clarification only complies with the law laid down by the Apex Court in making the seats meant for institutional preference to be a University-wise preference.

(14) Learned counsel for the petitioners has further submitted that due to impugned notification, the interest of the petitioners is adversely affected and they are being discriminated against by denying

⁵ 1980 AIR (SC) 838

⁶ 1980 AIR (SC) 820

them admission in the Baba Farid University/ its affiliated Colleges; despite the fact that they are higher in merit to the candidates. However, we fail to agree with the submissions made by learned counsel. It is well settled by now that every adverse consequence is not a legal injury. The provisions under challenge have to be tested through the constitutional prism and not on the basis of perceived grievance of the petitioners. Once the University- wise institutional preference has been upheld by the Apex Court then some adverse effects upon the candidates; not belonging to that University; are bound to occur. But such grievance cannot be raised to the level of constitutional injury. The very basis of upholding the reservation by way of institutional preference is the institutional continuity in educational pursuit; keeping in view the different standards of education, different systems of examination and different eco-system in which the concerned University functions. Therefore, if some candidate lower in merit, but belonging to the University for which the institutional preference is prescribed gets the admission; would not lead to violation of the constitutional right of other person who might be higher in merit but otherwise not within the zone of institutional preference. Resultantly, we are of the view that the impugned notification does not violate any constitutional right of the petitioners. Hence, the same has to be upheld.

(15) The next argument of the learned counsel for the petitioners that there cannot be any reservation within reservation is also liable to be noticed only to be rejected. A bare perusal of the impugned clarification shows that it is not creating any reservation within reservation. Rather it is creating institutional preference based on the University-wise preference. The judgments relied upon by learned counsel for the petitioner in the case of *Attar Singh Dhoor (supra)*, is altogether distinguishable on the facts of the present case. In that case, the entire basis for holding that there cannot be further classification in the reserved category of Scheduled Castes was that the class of Scheduled Castes is created by a Presidential Order after a group is identified by the State to be a homogenous group; which is described as Scheduled Caste. Hence, it was held that once a group is identified by the State itself to be a homogenous Group and that group having been accepted by the presidential order to be homogenous and notified as such in the Schedule of the Constitution then further bifurcation of the castes in the Schedule would not be in tune with Article 14 of the Constitution of India. However, in the present case, there is no homogenous Group identified by the State as such. The institutional preference is made not with reference to the candidates but with

reference to the University/Institute and its unique system of examination/ standards of education and its working eco system. There is no parallel between the category of institutional preference and identification of Scheduled Castes under Article 341 of the Constitution of India. Vide the impugned notification, the respondents have only made the admission process to be in conformity with the judgment of Hon'ble the Supreme Court rendered in *Pardeep Jain's case (supra)* which had held that institutional preference has to be University-wise or institute-wise; from where the candidates have passed the qualifying examination.

(16) The next submission made by learned counsel for the petitioners that word “preference” would mean only to be a preference when all other qualifications are equal; is also not sustainable with reference to the process of admission to the PG Medical Courses. The judgment in *The Secretary, Andhra Pradesh Public Service Commission's case (supra)* relied upon by learned counsel for the petitioners is distinguishable even on the basic principles. That judgment itself has clarified that the word “preference” is capable of different shades of meaning; taking colour from the context, purpose and object of its use under the scheme of things envisaged by the provision of law. The judgment relied upon by the learned counsel relates to the recruitment where qualifications are prescribed by the rules and then the preferential qualification is also prescribed. In this context of legal provisions, Hon'ble the Supreme Court held that the word “preference” would mean the preference only if all other qualifications of the candidates happen to be equal and that the word “preference” cannot be used to give a en-block preference to the persons possessing preferential qualification. However, keeping in view the context of admission to PG Medical Course and its legal provisions; as upheld by the Apex Court, it can very well be said that the word “preference” is not to be used only as a preference amongst two equals. In the context of institutional preference, it has been used in the context of excluding the candidates from other institutions from admission to the Universities/ Institutions where the admissions are being made by way of institutional preference. In case of institutional preference being provided under the provision of law the candidates belonging to the Institute/ University have to be given preference over the candidates belonging to the other Universities en-block. In this sense, the word “preference” in the context of the institutional preference has been used as a kind of reservation by earmarking the certain percentage of seats for the candidates passing the qualifying exam from a particular

University/ Institute. In the present case, the word “preference” has to be understood and has to be interpreted in that sense and in that context only. Hence, we do not find any force in the argument raised by learned counsel for the petitioner.

(17) In CWP No.8327 of 2018, learned counsel for the petitioners has contended that all the 50% seats of State Quota have been reserved for institutional preference which is unconstitutional. He has relied upon the decision of this Court rendered in CWP No.5446 of 2007 – *Dr. Manish Sethi and others versus State of Punjab and others* decided on 24.05.2007. His submission is that since the petitioners in this petition belong to the State of Punjab, being residents/ domicile of the State of Punjab, they are entitled to get admission against 50% State Quota seats.

(18) However, we do not find argument of learned counsel for the petitioners to be sustainable in the facts of the present case. Firstly, in CWP No.8825 of 2018, the written statement filed by the respondent- University has clarified that there is 50% reservation for institutional preference within the State quota. Hence, it is clear that all the seats meant for State quota have not been reserved by way of institutional preference. Secondly, vide clarification dated 02.04.2018, State has made all the inservice doctors to be eligible for the State Quota seats; irrespective of the fact whether they have passed their qualifying MBBS Exam from the State of Punjab or from any other University outside the State of Punjab. By virtue of this clarification, there is no percentage left reserved by way of institutional preference. The effect of this notification is that in the Post Graduate Medical seats available in Baba Farid University and its affiliated Colleges, the candidates availing institutional preference will be competing with the inservice doctors on the basis of their merit and the inservice doctors can very well supersede the institutional preference candidates of Baba Farid University on the basis of merit. Hence, after this amendment, no particular quota is left for institutional preference. Only a restriction is left qua the candidates; claiming solely on the basis of institutional preference; to the effect that they will be first competing within their University on the basis of University-wise preference. Accordingly, it cannot be held that 100% seats have been reserved by way of institutional preference. It is only a nomenclature given by the respondents to a category of seats where the candidates on the basis of institutional preference and the candidates claiming on the criteria other than the institutional preference, all would be competing. For the same

reason, the judgment relied upon by learned counsel for the petitioners is altogether distinguishable on the facts of the present case.

(19) Otherwise also, if the argument of the learned counsel for the petitioners in CWP No.8327 of 2018 is accepted, this would tantamount to curving out 50% seats of the State Quota on the basis of or with reference to residence/ domicile. However, this kind of reservation has been held to be un-constitutional by the Supreme Court in the case of *Pardeep Jain's (supra)*.

(20) Though the petitioners may be having some grievance of being ignored in the process of admission, however, as has been held above; the grievance is not having a constitutional perspective to make the same sustainable. Every grievances may not necessarily have a legal remedy for a citizen. Since the provisions of the prospectus have been found to be constitutionally sustainable, therefore, any perceived legal injury or grievance of the petitioners is immaterial for the purpose of adjudication.

(21) In view of the above, the provisions impugned in both the above said writ petitions are upheld. Accordingly, both the petitions are dismissed.

Atul Bhatia