

*Before Hemant Gupta & Kanwaljit Singh Ahluwalia, JJ*

**ANJALI SINDHU & OTHERS,—Petitioners**

*versus*

**UNION OF INDIA AND OTHERS,—Respondents**

CWP No. 12489 of 2008

4th September, 2008

*Constitution of India, 1950—Art. 226—Admission to Medical Courses—Reservation of seats for NRI candidates before start of counselling—Cl. 2 of Chapter IV of Prospectus provides that seats could be increased or decreased subject to decision of Medical Council of India & State Government—Reservation of 5 seats for NRI before start of counselling neither violates terms of Prospectus nor principles of law—Plea of determination 27% reservation for B.C. also rejected while holding that High Court cannot re-write terms of Prospectus so as to permit reservation of seats for B.C. by taking into consideration total number of seats by giving such reservation in All India Quota Seats—Petitions dismissed.*

*Held*, that the Note in Chapter 5 is to the effect that the reservation policy is subject to revision or the State Government's decision on the last date of submission of the admission form, but such reservation policy is in respect of reservation of seats meant for the Scheduled Castes, Backward Classes and physically handicapped candidates. The seats for NRI candidates have been reserved but such reservation is not in terms of the decision of the State Government circulated on 19th March, 1999 as mentioned in Chapter V but in view of the judgment in *P.A. Inamdar versus State of Maharashtra*, 2005(5) SLR 409 (SC) wherein not exceeding 15% seats have been permitted to be reserved for bona fide NRI students. It is the conditions in Chapter IV, which permit the variation in the number of seats and seats distribution before the start of the counselling. Therefore, reservation of 5 seats for NRI candidates before the start of the counselling cannot be said to be violative of the terms of the Prospectus.

(Para 10)

*Further held*, that Chapter V of the Prospectus containing reservation and distribution of seats clearly provides that 50% seats

meant for bona fide residents of Haryana, shall be reserved in the manner mentioned therein. This Court cannot re-write the terms of the Prospectus so as to permit the reservation of seats for Backward Classes by taking into consideration the total number of seats by giving such reservation in All India Quota seats. The Central Government,—*vide* circular dated 10th March, 2008 has reserved 15% seats for the Scheduled Castes candidates in 15% All India Undergraduate Quota. We cannot introduce reservation for Backward Classes in 15% of All India quota, nor can we vary the reservation provided for Backward Classes of the *bona fide* residents of Haryana.

(Para 14)

Jagdish Manchanda, Advocate, *for the petitioners.*

S. K. Hooda, Senior DAG, Haryana.

Balram Gupta, Senior Advocate, with Vikrant Hooda, Advocate,  
*for respondent Nos. 4 to 6.*

Rajiv Atma Ram, Senior Advocate, with B.N.S. Sharma,  
Advocate, *for respondent No. 7.*

(ii) **CWP No. 15396 of 2008**

MAMTA SHARMA AND OTHERS,—*Petitioners*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents*

R. K. Malik, Senior Advocate, with Parveen Rohilla, Advocate,  
*for the petitioners.*

S. K. Hooda, Senior DAG, Haryana.

Balram Gupta, Senior Advocate, with Vikrant Hooda, Advocate,  
*for respondent No. 2.*

(iii) **CWP No. 12973 of 2008**

ARUNA AND ANOTHER,—*Petitioners*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents*

J. S. Yadav, Advocate, *for the petitioners.*

S. K. Hooda, Senior DAG, Haryana.

Balram Gupta, Senior Advocate, with Vikrant Hooda, Advocate,  
*for respondent Nos. 3 and 5.*

***HEMANT GUPTA, J.***

(1) This order shall dispose of Civil Writ Petition Nos. 12489 of 2008 and 15396 of 2008, wherein the question regarding reservation of 5 seats for Non Resident Indian (NRI) candidates is in issue. This order shall also dispose of CWP No. 12973 of 2008, wherein the petitioner, a backward class candidate, has sought admission to MBBS course, alleging that seats reserved for backward class candidates, have to be computed keeping in view the total number of seats available i.e. by including 15% seats meant to be filled up on all India basis.

(2) Maharshi Dayanand University, Rohtak, published a Prospectus to conduct entrance examination and declaration of results for admission in MBBS/BDS/BAMS courses in the Government and Government Aided Medical/Dental and Ayurvedic Colleges in the State of Haryana for the year 2008, in pursuance of the notification of the State Government dated 18th March, 2008.

(3) In these writ petitions, the issue is in respect of the seats available for MBBS course in Pandit B.D. Sharma, Post Graduate Institute of Medical Sciences (for short PGIMS), wherein the total seats available are 150. Out of such 150 seats, 15% seats are to be filled up through entrance test conducted by the Central Board of Secondary Education and one nominee of the Government of India. The last date of receipt of the application forms was 17th June, 2008 and the entrance examination was to be conducted on 6th July, 2008. In Chapter-IV of the Prospectus, pertaining to the number of seats and distribution, the following clauses find mention :—

- “1. Seats will be filled only after receipt of approval of Medical Council of India/Dental Council of India.
2. Seats are likely to increase or decrease subject to the decision of the M.C.I./D.C.I./University/State Government.
3. Distribution/ Reservation of seats will be College-wise and course-wise.

4. The seats distribution, number/name of the College(s)/ Institute(s) can be changed/added by the competent authority before the start of counselling to the course(s).
5. The distribution of above seats will be notified later on as per the policy of the State Government”.

(4) Chapter-V of the Prospectus relating to the reservation and distribution of seats provided that 50% seats meant for *bona fide* residents of Haryana, shall be reserved for the categories of the Scheduled Castes and the Backward Classes Blocks A and B. Such stipulation is in terms of the reservation policy of the State Government dated 19th March, 1999. The Note appended thereto stipulated that the reservation policy is subject to revision/State Government’s decision and the same as applicable on the last date of submission of application forms shall be followed.

(5) The grievance of the petitioner is that the last date for submission of the application forms was 17th June, 2008, but the 5 seats for the NRI candidates have been reserved on 16th July, 2008 (Annexure R.3). Therefore, the reservation of seats for NRI candidates, contravenes the Clauses of the Prospectus and thus, cannot be enforced during the current academic year. As a consequence thereof, 5 seats, which have been reserved and are contemplated to be filled up by such NRI candidates, are required to be filled up on merit from amongst the general category candidates. Thus, the action of the respondents in reserving such seats, is illegal, arbitrary and not sustainable.

(6) The other limb of argument is that by reserving 5 seats for NRI candidates, more than 50% seats would be reserved for one or the other category and thus, such reservation is not permissible in view of the judgment of the Hon’ble Supreme Court in **Indra Sawhney versus Union of India (1)**, and a Division Bench judgment of this Court reported as **Army Institute of Higher Education versus State of Punjab and others (2)**, Reliance is also placed upon

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(1) (1992) 3 SCC 217

(2) 2007 (6) SLR 837

**Dr. Suman Bhaskar versus State of Haryana (3) ; Harpreet Singh Randhawa and another versus State of Punjab, through Chief Secretary and others (4), Gurlal Singh and others versus The State of Punjab and others (5).**

(7) On the other hand, Shri Rajiv Atma Ram, learned Senior Counsel appearing for the NRI candidates has relied upon Clauses 2 and 4 of the Chapter-IV of the Prospectus, as reproduced above, to contend that the seats distribution was liable to change before the start of counselling and thus, the seats for NRI candidates could be validly introduced. Reliance is placed upon Clause 2 of Chapter-IV of the Prospectus, which is to the effect that seats could be increased or decreased, subject to the decision of the Medical Council of India and the State Government. Reliance is placed upon **Rajiv Kapoor and others versus State of Haryana and others (6)**, to contend that the conditions in the Prospectus can be changed in appropriate cases. It is also contended that 15% seats falling to the All India Quota MBBS/BDs seats is provided for the Scheduled Castes and Scheduled Tribes,—*vide* Government of India's circular dated 10th March, 2008 (Annexure P.2). It is contended that such 15% seats falling to the All India Quota is not a reservation, but a source of admission, which is available to all categories, including the students of Haryana. Therefore, 15% seats cannot be excluded for determining the seats falling to the reserved categories. In other words, out of 150 seats, 75 can be filled up from amongst the general categories candidates, whereas the seats reserved are only 59 out of 85% category and 15% of 23 seats i.e. (3.45 seats) falling to All India Quota, which is less than 75 seats, permissible to be filled up from amongst the reserved category candidates.

(8) The judgments referred to by Shri Malik, learned Senior Counsel for the petitioner, are to the effect that the conditions provided in the Prospectus cannot be changed. But none of the cases referred to by the learned counsel for the petitioners, is the case wherein there is a stipulation permitting change in the seats distribution before the

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(3) 1998 (3) RSJ 277

(4) 2000 (4) RSJ 666

(5) 1998 (3) RSJ 672

(6) AIR 2000 SC 1476

start of counselling. It is not disputed that seats for NRI candidates were reserved before the counselling started on 21st July, 2008. Therefore, in terms of the conditions of Prospectus itself, the State Government was competent to re-distribute the seats, particularly when it was published that the seats are likely to increase or decrease as per the decision of the State Government.

(9) In **Rajiv Kapoor's** case (*supra*), the Hon'ble Supreme Court, considered the Full Bench Judgment of this Court in **Amar Deep Singh Sahota versus State of Punjab (7)**, and held that the Prospectus as well as the orders of the Court have to be construed in such a manner that *interse* merits of the service candidates are properly assessed on the basis of their credentials and performance in service and not merely of theoretical knowledge of the subjects as in the cases of non service candidates belonging to the other categories. The Court found that the merits of the HCMS candidates are required to be adjusted in terms of the criteria shown in the Government orders, which were at variance with the criteria published in the Prospectus.

(10) We have heard the learned counsel for the parties at some length. The Note in Chapter 5 is to the effect that the reservation policy is subject to revision or the State Government's decision on the last date of submission of the admission form, but such reservation policy is in respect of reservation of seats meant for the Scheduled Castes ; Backward Classes and physically handicapped candidates. The seats for NRI candidates have been reserved, but such reservation is not in terms of the decision of the State Government circulated on 19th March, 1999, as mentioned in Chapter-V, but in view of the judgment in **P.A. Inamdar versus State of Maharashtra (8)**, wherein not exceeding 15% seats have been permitted to be reserved for *bona fide* NRI students. It is the conditions in Chapter-IV, which permit the variation in the number of seats and seats distribution before the start of the counselling. Therefore, reservation of 5 seats for NRI candidates before the start of the counselling cannot be said to be violative of the terms

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(7) 1993 (2) PLR 212 (F.B.)

(8) 2005 (5) SLR 409 (SC)

of the Prospectus. Consequently, we do not find any merit in the arguments raised by the learned counsel for the petitioners.

(11) The argument that 5 seats reserved for the NRI candidates is violative of the principles of law enunciated in **Indra Sawhney's** case (*supra*) as well as in the Division Bench judgment of this Court in **Army Institute of Higher Education's** case (*supra*), is without any merit.

(12) The Central Government has reserved 15% seats for the Scheduled Castes in respect of seats falling to All India Quota candidates as well. Thus, the admission is from two sources i.e. one on the basis of all India Entrance Test and secondly, from amongst the *bona fide* residents of Haryana. The number of seats falling to the reserved categories, is required to be examined not from amongst the seats falling to the quota of *bona fide* residents of Haryana, but the total number of seats available in an educational institute. It is like vertical reservation. As mentioned above, 150 seats are available in PGIMS and out of such 150 seats, 75 seats are required to be filled upon from amongst the general category candidates. It includes the candidates from All India Quota as well the *bona fide* residents of Haryana. The number of seats reserved for the Scheduled Castes are (26+3) ; Backward Classes (24) ; physically handicapped (3) and (5) seats for NRI candidates i.e. total 61. It does not exceed 75 seats. Therefore, the reservation of 5 seats for NRI candidates, cannot be said to be violative of the Rule laid down in **Indra Sawhney's** case (*supra*) and in **Army Institute of Higher Education's** case (*supra*). Thus, in view of the above, the contention raised by the learned counsel for the petitioner is without any merit.

(13) Another argument raised by Shri J.S. Yadav, learned counsel for the petitioners in CWP No. 12973 of 2008, needs to be examined. Shri Yadav, has argued that 27% of reservation for Backward Classes is required to be determined keeping in view the total seats i.e. 150 seats.

(14) The said argument is without any merit. Chapter-V of the Prospectus containing reservation and distribution of seats clearly

provides that 50% seats meant for *bona fide* residents of Haryana, shall be reserved in the manner mentioned therein. This Court cannot re-write the terms of the Prospectus so as to permit the reservation of seats for Backward Classes by taking into consideration the total number of seats by giving such reservation in All India Quota seats. The Central Government,—*vide* circular dated 10th March, 2008 (Annexure R.2) has reserved 15% seats for the Scheduled Castes candidates in 15% All India Undergraduate Quota. We cannot introduce reservation for Backward Classes in 15% of All India quota, nor can we vary the reservation provided for Backward Classes of the *bona fide* residents of Haryana.

(15) In view of the above, there is no merit in all the writ petitions. Consequently, the writ petitions are dismissed with no orders as to costs.

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**R.N.R.**

***Before Satish Kumar Mittal & Jaswant Singh, JJ.***

**RAM LAL & OTHERS,—Petitioners**

***versus***

**STATE OF PUNJAB AND OTHERS,—Respondents**

CWP No. 13327 of 2008

15th September, 2008

***Constitution of India, 1950—Art. 226—Punjab Panchayati Raj Act, 1994-S. 12(1)—Election for office of Sarpanch reserved for S. C. category—Respondent No. 6 belonging to S.C. category declared elected Panch against General category—Whether eligible to contest election of Sarpanch reserved for S.C. Category—Held, yes—Respondent held eligible to contest election of Sarpanch reserved for S.C. Category.***

*Held*, that a Panch belonging to the Scheduled Caste is eligible to contest the election of the office of Sarpanch, which is reserved for Scheduled Caste by producing a Scheduled Caste Certificate. He cannot