

authorities had found that the truck was used for carriage of smuggled goods by the driver. It was held that the failure on the part of the owner to prove the absence of knowledge or connivance of the driver, on a plain reading of Section 115 of the Customs Act renders the truck liable to confiscation. I find no reason as to why the said ratio of the decision be not made applicable to the present case despite more stringent and clear provisions under the Act. There is nothing to show that the persons who were in-charge of the vehicle at that time had taken any precaution. It had been established that 110 bags, each containing 40 Kgs. of poppy heads were being transported in the truck in question. There is nothing to show that the persons in-charge and each of them had taken all reasonable precautions against such use. To that extent, vicarious liability has arisen.

(16) In the case of *M/s Punjab Kashmir Finance Pvt. Ltd. v. State* (3), the truck belonged to the Company and was given on hire. It was seized while carrying contraband material. It was held that the Company did not have the knowledge and ultimately orders of confiscating the truck were set aside. I find myself in respectful disagreement with the view taken in the aforesaid case because for the reasons recorded above. The appellant can not take advantage of sub-Section 3 to Section 60 of the Act as it is not established that the agent of the appellant or the person in-charge of the conveyance and each of them had taken all reasonable precautions against such use. When the language of the Section is clear and words plain, other interpretation will not be permissible. I find no reason to take a different view from the trial court.

(17) For these reasons, the appeal, being without any merit, fails and is dismissed.

J.S.T.

Before Hon'ble R. P. Sethi & S. S. Sudhalkar, JJ.
MAHARISHI DAYANAND UNIVERSITY AND
ANOTHER,—Appellants.

versus

NITASHA PAUL AND ANOTHER,—Respondents.

L.P.A. No. 212 of 1994.

23rd February, 1995.

Maharishi Dayanand University Calendar 1986—Constitution of India, 1950—Articles 14 & 21—Migration—Admission by migration

to B.D.S. and M.B.B.S. courses from one State to another—Such migrations, if actuated by unfairness and discrimination and are against the provisions of law and the University Calendar can be challenged under Article 226—Migrations cannot be used as largess to be bestowed by the State according to its whims and fancies—Exercise of power without following guidelines is liable to be quashed and admissions granted are liable to be cancelled even if recipients of such admissions have pursued studies in the colleges they have been migrated to illegally—Court cannot direct creation of additional seats to accommodate petitioners in the circumstances—On quashing of such migrations, the seats ought to be declared vacant and after re-advertising the vacant seats for all eligible candidates, selection should be made for migration in accordance with law.

Held, that there is no doubt that claim of admission by migration is neither a fundamental nor a legal right of a citizen. It is, however, equally true that action of the respondents of granting admission by migration if found to be violative of any fundamental right or actuated by considerations not recognised by law can upon challenged can be adjudicated by the Court in exercise of the powers under Article 226 of the Constitution of India and appropriate directions be issued for the enforcement of the fundamental right.

(Para 10)

Further held, that the State and the other functionaries bestowed with the powers of conferring largess in various forms including the admission to professional courses cannot be held to be as free as an individual or allowed to select the recipient of its largess without any guidelines. The action of the respondents if found to be arbitrary and based upon capricious standards for the choice of a person for whom the largess is to be bestowed is to be held within the ambit and scope of this Court for which appropriate relief can be granted to the aggrieved. Our constitutional system demands equality and absence of arbitrariness and discrimination. The action of the statutory authorities are required to be fair and free from suspicion. The University cannot be permitted to act arbitrarily at its sweet will and like a private individual and its action are required to be in conformity with the standards and norms which upon scrutiny should be held to be not arbitrary, irrational or irrelevant. The admission by means of migration if found to have been conferred without adopting the proper guidelines or held to be arbitrary is required to be quashed. The right of equality is the heart and soul of our constitutional system. The guarantee of equal protection has been held to embrace the entire realm of the State action and is attracted not only when an individual is discriminated against in the matter of exercise of his rights or in the matter of imposing liabilities but also in the matter of granting privileges. Equality before law cannot be achieved unless equality of opportunity is ensured. Article 14 has been held to be not merely a prohibition but confers right of equality and its violation is justiciable by the Court in exercise of power under Article 226 of the Constitution of India.

(Para 11)

Further held, that it cannot be said that the University can grant admissions by migration at its sweet will and without following the procedure free from doubts and suspicion. Such procedure, policy of the Rule is required to be tested on the touch-stone of equality and fairness, if the admissions are found to be not based upon fairness or are the result of discrimination, the same are liable to be quashed.

(Para 18)

Further held, that it is true that the relevant Rules/Statutes does not envisage that merit is the sole criterion for migration but that does not absolve the University from its responsibility to show that the orders were passed fairly, impartially and uniformly on the basis of the criterion laid down and the uniform procedure adopted.

(Para 20)

Further, held that only such candidates who have qualified in the Medical Entrance Examination by acquiring the minimum percentage of marks but were unable to get admission on account of various considerations in that State, and were admitted outside the State in other medical institution duly recognised by the Medical Council of India, could alone seek migration to that particular State where Medical Entrance Examination is a condition precedent for seeking admission to the professional course. Any other interpretation would defeat the very purpose sought to be achieved by the aforesaid condition prescribed under the University Calendar.

(Para 21)

Further held, that the Court has no jurisdiction to direct the creation of additional seats for accommodating such persons who approach the Court by way of writ petitions. The possibility of there being more meritorious candidates desirous of seeking migration cannot be ruled out. The illegality committed in favour of some privileged candidates cannot be directed to be repeated for those who come to the Court for seeking a similar treatment. The creation of additional seats in professional Colleges require application of mind of the educational authorities who may need additional apparatus and staff for imparting education in the field. Without knowing or ascertaining the exact position of the staff and other requisite facilities for undergoing the course, the issuance of direction of creation of additional seats may not only adversely affect the Institution but is also detrimental to the interests of those who are directed to be provided additional seats.

(Para 23)

Further held, that once it is held that the migration has been procured by illegal means and in violation of not only the provisions of law but also the Constitution, no leniency can be shown in favour of those who have obtained such uncalled for benefits in their

favour. The candidates who have succeeded in getting migration were not allowed to continue by any specific order of the Court.

(Para 25)

Further held, that no migrated student has been allowed to continue the study on the basis of the Court orders in the instant cases.

(Para 26)

Further held, that the impugned order of the learned Single Judge in so far as it directs the grant of admission to the writ petitioners before him by creating additional seats is set aside.

(Para 27)

Further held, that the respondent-University is directed to advertise the vacancies and after getting the applications from the desirous students, make selection in accordance with the University Calendar by adopting a reasonable and uniform policy and standards for the said purpose. The merit of the students shall be kept as a condition for making selection for the purposes of migration for the students.

(Para 27)

Ashok Aggarwal, Sr. Advocate with Vikrant Sharma, Advocate
for the Petitioner.

Arun Nehra, Addl. A.G. for respondent 2.

K. K. Gupta, Advocate for respondent 4.

J. S. Thind, Advocate for respondent 8

JUDGMENT

R. P. Sethi, J.

(1) The migration of respondent Nos. 4 to 11 namely Ms. Puneet. Ms. Mindu Bansal. Mr. Sumeet Malik. Ms. Monika Bhasin. Ms. Pooja Batra, Mr. Manoj Mittal, Mr. Tarun Kumar Bhutani and Mr. Munish Madan in Civil Writ Petition No. 13507 of 1993 which is subject matter of L.P.A. No. 212 of 1994 was challenged mainly on the ground of being based upon extraneous considerations and opposed to the relevant Rules and Regulations/Instructions issued by the appellants-University with a further prayer to admit the petitioner therein namely Nitasha Paul to the 2nd year professional B.D.S.

Course as she claimed to be higher in merit besides being fully eligible for migration. The petition was allowed with a direction to the official respondents to permit migration of the said petitioner in Maharishi Dayanand University and Government Dental College, Rohtak forthwith without cancelling any migration which was the subject matter of challenge in the aforesaid writ petition. In other civil Writ Petition which are subject matter of L.P.A. Nos. 78, 79, 80 and 211 of 1994, the Court felt that creation of as many seats as the petitioners were not possible and the only way out was to direct the respondent-authorities to consider the case of the petitioner on the basis of their merit in the 1st Year Professional Course and admit only five students i.e. three at Dental College, Rohtak and two at D.A.V. Centenary Dental College, Yamunanagar. Respondents were further directed to prepare merit list of the petitioners and if they come within the five seats available, they shall be migrated in order of preference according to their merit at Rohtak and Yamuna Nagar. It was further declared that "no other writ petition that might come will not be entertained on the ground of laches and delay."

(2) In Civil Writ Petition No. 16067 of 1993 a prayer has been made for quashing the migration of private respondents, named herein above, to Government Dental College Rohtak in preference to the petitioner who claimed to be higher in order of merit. A further prayer has been made for immediately admitting the petitioners in 2nd year profession B.D.S. Course by migration. This petition was directed to be heard alongwith L.P.A. No. 78 of 1994.

(3) In Civil Writ Petition Nos. 8097, 8215, 8589, 9620, 7991 and 8007 of 1994 the migration of private respondents namely Bhawana Narula, Mr. Manish Jain, Miss Anjali Hooda, Miss Anamika Bishnoi have been challenged mainly on the ground of discrimination and the policy of pick and choose adopted by the official respondents and it was prayed that admission of private respondents be quashed with a direction to the respondent-authorities to admit the petitioners to the 2nd year professional M.B.B.S. Course on the basis of migration and keeping in view the directions of this Court in C.W.P. No. 5954 of 1992 *Richa Sood v. Director/Principal, Medical College, Rohtak* decided on 3rd June, 1994.

(4) In all the writ petitions and the appeals, common point of law is involved requiring the interpretation and scope of the relevant provisions of the Maharishi Dayanand University regulating admission by migration to B.D.S. and M.B.B.S. courses. All the L.P.As. and the C.W.Ps. are therefore being disposed of by a common judgment.

(5) In order to appreciate the scope and ambit of controversy between the parties, the facts in the case of the writ petitioners Nitasha Paul are extracted so far as migrations to B.D.S. are concerned. The petitioner in that case got admission in K.L.E.S. Dental College and Hospital, Belgaum (Karnataka) who after passing her 1st Year Professional of B.D.S. applied for migration to 2nd year at Dental College, Rohtak. It was submitted that Dental College, Belgaum was recognised institution and that she had been admitted on the basis of her 10+2 marks. Alongwith her application, the petitioner attached No Objection Certificate, the marks sheet from the Karnataka University, her domicile certificate of Haryana and certificate from the Principal, Dental College and Hospital, Belgaum, certifying that she is *bona fide* student of the College studying in the 2nd year B.D.S. Course for the year 1993-94. In all 49 applications had received by the appellant University seeking migration from different colleges throughout the Country. A sub Committee is stated to have been constituted which comprised of the Dean of the College, Dr. (Mrs.) M. K. Chadha, Dr. B R Arora and Dr V K Grover, who found only 23 candidates to be eligible. In order of merit, the aforesaid Committee recommended the following candidates for migration to Dental College, Rohtak :

1. Aradhna Mishra,
2. Umand S. Nayyar,
3. Nitasha Paul,
4. Naveen Chhabra,
5. Puneet,
6. Puneet Batra.
7. Rashi Majithia.

It is not disputed that in all there were eight seats and as one candidate had already been admitted in the Dental College, Rohtak even before the expiry of the period of three months, the names of only seven candidates were recommended for their migration. It is worthwhile to mention that Vice-Chancellor of the appellant University had constituted a Committee on 20th February, 1991 for laying down criterion for migration. The eight candidate who had been migrated even before the expiry of stipulated period of three months was respondent Munish Madan. It was alleged that recommendations of the Sub-Committee were ignored and,—vide the

order impugned in the writ petition dated 19th October, 1993, the migration was granted to the private respondents against the remaining seven seats excluding the seat of respondent Munish Madan. It was further contended that though Pooja Batra, respondent, had been declared ineligible by the Sub Committee, yet she was allowed migration,—vide the order impugned.

(6) The claim of the writ petitioner was resisted on the grounds that as the migration of the private respondents was in accordance with the judgment of this Court in C.W.P. No. 5954 of 1992 decided on 3rd June, 1992, the same could not be challenged by way of a writ petition. It was contended that as the migration was not a legal right, the petitioners could not invoke the jurisdiction of this Court to determine its legality and consequently grant the relief to the writ petitioners. It was further contended that there has not been violation of any Rule or Regulation laid down in the Ordinance for migration to Medical/Dental College, Rohtak. The validity of the reasons seeking migration could be adjudged by the respondent-University and its opinion could not be substituted. The migration had been granted to the private respondents after considering their individual cases and in the light of the judgment earlier delivered by this Court. In all the writ petitions where the petitioners had sought migration in B.D.S., the grounds for seeking the migration were identical.

(7) So far as the claim of the petitioners seeking migration to M.B.B.S. is concerned, the pleas are almost identical. All the writ petitioners were admitted to undergo M.B.B.S. Course at various Colleges in the country. All such colleges are claimed to have been recognised by the Medical Council of India and are affiliated to the Universities. The petitioners have cleared their 1st year Professional Course and had applied for admission in the Second year professional course alongwith the requisite documents. They have claimed admission on the basis of the University Calendar of the respondent-University and submit that the private respondents who had been migrated were possessing less marks than the writ petitioners in the first year professional examination. The action of the respondents is alleged to be contrary to the Rules and violative of provisions of Article 14 of the Constitution. The migration of the private respondents is alleged to be on the basis of pick and choose method by which the merit is said to have been completely ignored.

(8) In all the petitions objections have been raised on similar grounds as were raised while admitting the claim of the private respondents for migration in the B.D.S. course. It is submitted that for

consideration of the migration, the Vice Chancellor of the University had constituted the following committee :—

- (1) Prof. Ravi Parkash, Head, Department of Bio-Sc., M. D. University, Rohtak ;
- (2) Prof. R. K. Tuteja, Head Deptt. of Statistics, M. D. University, Rohtak ;
- (3) Dr. S. B. Siwach, Prof. & Head, Department of Medicine, Medical College, Rohtak ; and

(4) Asstt. Registrar (R&S), M. D. University, Rohtak.

The aforesaid Committee is stated to have met on 3rd June, 1994 after scrutinising the applications of all the candidates who had applied for migration, recommended the names of the following candidates for migration.

A. Medical College, Rohtak.

- (1) Amit Nagpal.
- (2) Pooja Gulati.
- (3) Vipender Sabharwal.
- (4) Ms. Bhawna Narula and
- (5) Manish Jain.

B. Maharaja Aggarsain Medical College, Rohtak.

- (1) Anjali Hooda and
- (2) Anamika Bishnoi.

(9) The committee did not recommend the names of the petitioners for the reasons specified in the reply submitted in the writ petitions. It was submitted that contention of the petitioners that they have been ignored for migration despite the fact that they have more percentage of marks was not sustainable in the eye of law. The action of the respondents is claimed to be legal, valid and according to law. Reliance is placed upon the judgments of this Court in :

- (1) C.W.P. 9934 of 1993 'Shardha Jain v. Director Medical College, Rohtak decided on 26th August, 1992 ;

(2) C.W.P. No. 7371 of 1992' *Sandeep Gupta v. Director Medical College, Rohtak* and decided on 26th August, 1992 ;

(3) C.W.P. No. 10527 of 1992' *Anand Bhayana v. Director Medical College Rohtak*, Decided on 26th August, 1992.

wherein it was held that migration being not a legal right, the writ petitions were not maintainable. It is submitted that as no legal or fundamental right of the petitioners have been violated, the writ petitions being mis-conceived are liable to be dismissed.

(10) The claim of the writ petitioners challenging admission by migration has been mainly resisted on the ground that as the migration is not a fundamental right, no person can approach the Court for the grant of relief of admission by migration. Reliance is placed upon *Shardha Jain's case* (Supra), *Sandeep Gupta's case* (Supra) and *Anand Bhayana's case* (Supra). There is no doubt that claim of admission by migration is neither a fundamental nor a legal right of a citizen. It is, however, equally true that action of the respondents of granting admission by migration if found to be violative of any fundamental right or actuated by considerations not recognised by law can upon challenge can be adjudicated by the Court in exercise of the powers under Article 226 of the Constitution of India and appropriate directions be issued for the enforcement of the fundamental right. It is now acknowledged position of law that rule of law prevails in our country which has been guaranteed by the Constitution. The Supreme Court in *Director of Rationing and Distribution v. The Corporation of Calcutta* (1), held that rule of law has been guaranteed in our Constitution by virtue of the provisions contained in Part III thereof as well as by other provisions in other parts. The State, no less than its citizens, were bound by the laws of the land. The Courts have to follow the ordinary principles of construction that no one is exempted from the operation of the Statute unless the statute expressly guaranteed the exemption or the exemption arose by necessary implication. In a state which has a written constitution and where the pattern of Government is democratic, as we have in our country, the one standing feature of it is the supremacy of law in the realm, commonly known as the rule of law. The term 'rule of law' in brief connotes the undisputed supremacy of law and envisages a State of things in which every one respects the law and where law has to be followed by every one collectively and individually. The

supremacy of law is designed to give security to the rights of individuals who are the citizens of a free democratic State. The law has to be followed and cannot be transgressed by any one, whether by the State or the individual. If the violation of the rule of law is not prevented, the results are necessary to be disastrous as the very fabric of the democratic system is apprehended to be destroyed. The Supreme Court again in *Mohd. Rashid Ahmed v. State of U.P.* (2) and *A. K. Karipak v. Union of India* (3) :

“Under the Constitution, the rule of law pervades over the anti-field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a Welfare State like ours, it is inevitable that the jurisdiction of the administration bodies is increasing at a rapid rate. The concept of the rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their function in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedure which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.”

It was further held :—

“This Court pertinently drew attention to the basic concept of natural justice *vis-a-vis* administrative and quasi-judicial enquiries, and stated that any decision, whether executive, administrative or judicial or quasi-judicial, is no decision if it cannot be ‘just’, i.e. an impartial and objective assessment of all the pros and cons of a case, after due hearing of the parties concerned.”

(2) A.I.R. 1979 S.C. 592.

(3) A.I.R. 1970 S.C. 150.

(11) The State and the other functionaries bestowed with the powers of conferring largess in various forms including the admission to professional courses cannot be held to be as free as an individual or allowed to select the recipient of its largess without any guidelines. The action of the respondents if found to be arbitrary and based upon capricious standards for the choice of a person for whom the largess is to be bestowed is to be held within the ambit and scope of this Court for which appropriate relief can be granted to the aggrieved. Our constitutional system demands equality and absence of arbitrariness and discrimination. The action of the statutory authorities are required to be fair and free from suspicion. The University cannot be permitted to act arbitrarily at its sweet will and like a private individual and its action are required to be in conformity with the standards and norms which upon scrutiny should be held to be not arbitrary, irrational or irrelevant. The admission by means of migration if found to have been conferred without adopting the proper guidelines or held to be arbitrary is required to be quashed. The right of equality is the heart and soul of our constitutional system. The guarantee of equal protection has been held to embrace the entire realm of the State action and is attracted not only when an individual is discriminated against in the matter of exercise of his rights or in the matter of imposing liabilities but also in the matter of granting privileges. Equality before law cannot be achieved unless equality of opportunity is ensured. Article 14 has been held to be not merely a prohibition but confers right of equality and its violation is justiciable by the Court in exercise of power under Article 226 of the Constitution of India.

(12) The allegations made by the petitioners seeking quashing of migration of private respondents even *prima facie* would attract the applicability of Article 14 of the Constitution conferring jurisdiction upon this Court to adjudicate and decide the pleas raised. There is no substance in the argument of the learned counsel for the appellant-University and the private migrated candidates regarding the non maintainability of the writ petition in this Court on the technical plea as noted earlier.

(13) The migration of the students to B.D.S. Course is governed by Maharishi Dayanand University Calendar, which provides :—

“The migration of a candidate from a Dental College, whose B.D.S. Degree has not been recognised by the Dental Council of India, shall not be permitted. The application for migration must be made by the applicant within three

months of the date of declaration of M.D.U., Rohtak result. In case the request is received after three months, the approval of the Dental Council of India be obtained. The applicant :—

- (a) must have passed :—
 - (i) the first professional BDS examination of other University,
 - (ii) the medical entrance examination or where the medical entrance examination is not held, the pre-medical of its equivalent examination with at least 50 per cent marks in the aggregate of the subjects of English, Chemistry (Organic and Inorganic), Physics and Biology.
 - (b) must belong to the State of Haryana or to the State Government whose candidates are admitted to reserved seats, and are recommended by them for migration to the Medical College, Dental College, Rohtak ;
 - (c) Produce all such certificates and pays all fees as may be demanded by the (Principal/Director of the College. A Candidate must have valid reasons for migration. Migration cannot be claimed as a matter of right and may be refused by the University without assigning any reason. Migration will be allowed against a vacant seat, if any, out of the sanctioned strength in the year of admission.
 - (d) the migration student must join the new college within 30 days of the sanction of migration by the University. Otherwise, his migration will automatically stand cancelled unless the period for sufficient cause, is extended by the Vice-Chancellor.”
- (14) Similarly, the migration to M.B.B.S. Course is governed by the following provisions of the Calendar :—
- “Migration to Medical College, Rohtak. Except when authorised by the Academic Council, migration of a candidate from a Medical College whose M.B.B.S. Degree has not been recognised by the Medical Council of India, Shall not be permitted. The application for migration must be made by the applicant within 3 months of declaration of Maharishi Dayanand University result. In case the request is received after three months, the approval of the Medical Council of India be obtained.

The applicant—

(a) must have passed—

(i) the first professional M.B.B.S. examination of the other University ;

(ii) the medical entrance examination or where the medical entrance examination is not held, the Pre-Medical or its equivalent examination with atleast 50 per cent marks in the aggregate of the subjects of English, Chemistry (Organic and Inorganic), Physics and Biology ;

(b) must belong to the State of Haryana or to the State Government whose candidates are admitted on reserved seats, and are recommended by them for migration to the Medical College, Rohtak ;

(c) produce all such certificates and pay all fees as may be demanded by the Director-Principal of the College.

A candidate must have valid reasons for migration. Migration cannot be claimed as a matter of right and may be refused by the Principal without assigning any reason. Migration will be allowed against a vacant seat, if any, out of the sanctioned strength in the year of admission."

(15) In order to get the benefit of migration a candidate has to prove that he/she has passed first year professional BDS examination from some other University, has passed the medical entrance examination or where the medical entrance examination is not held, the pre-medical or its equivalent examination with atleast 50 per cent marks in the aggregate such applicant must belong to the State of Haryana or the candidate of such government whose candidates are admitted on reserved seats and is recommended by the State Government for migration to the Medical/Dental College affiliated to Maharishi Dayanand University. After proving the conditions of eligibility, the applicant is required to produce the relevant certificate and assign valid reasons for migration.

(16) No party to this litigation have challenged the vires of the condition for migration of the Maharishi Dayanand University, as noted herein above.

(17) It is also not disputed that all the candidates whether the petitioners or the respondents have passed the first professional B.D.S./M.B.B.S. examination from their colleges and they belong to

the state of Haryana and they have also produce the relevant certificates on the basis of which they have claimed migration. It is also not dispute that migrations have not been granted on the basis of any merit prepared by the University and as the University is claimed to have absolute power to make selection of any candidate applying for migration if he/she fulfills the other conditions.

(18) It has been argued and we agree that the migration in the instant case is in effect and essence a manipulative admission to the B.D.S./M.B.B.S. course and these admissions have been obtained under the circumstances which are not free from doubt. The rights of other similarly situated have not been taken note of properly by the authorities of the respondent-University. Number of other candidates who were otherwise eligible for migration have not been provided adequate opportunity of seeking admission by migration. In *'Unni Krishan v. State of A.P.* (4). The Supreme Court relied upon *Bandhuna Kukti Morcha v. Union of India* (5), wherein it was held that right to life guaranteed by Article 21 does take in "educational facilities". It was held that right to education was implicit in and allowed from right to life guaranteed by Article 21 of the Constitution. It was held that "right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world". The Court felt that without education being provided to the citizen, the objectives set forth in the Preamble of the Constitution cannot be achieved. The right of education was noted to have occurred in Articles 41, 45 and 46 of the Constitution. Reliance was placed upon *'Brown v. Board of Education'* (6), where it had been held :—

"Today, education is perhaps the most important function of State and local governments.....It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenships. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."

(4) J.T. 1993 (1) S.C. 474.

(5) 1984 (2) S.C.R. 67.

(6) 98 Lawyers Ed. 373.

The Court, however, did not agree with the extreme view that the State was under an obligation to provide adequate number of medical colleges/engineering colleges and other educational institutions to satisfy the educational needs of the citizens. It was, however, emphasized that the State should honour the command of Article 45 which should be made a reality. Reference was made to the National Policy of Education of 1986 and it was held, "Be that as it may, we hold that a child (citizen) has a fundamental right to free education upto the age of 14 years". It was held that right to education after the children (citizens) completes the age of 14 years is subject to the limits of the State's Economic Capacity and Development. In that case, the Supreme Court was dealing with the admissions to the Engineering Colleges which were run by private educational institutions and held that they were supplementing in the functions performed by the State. Being satisfied that the admission to private educational institutions was not being conducted in accordance with the provisions of law and the mandate of the Constitution, the Supreme Court provided a scheme with the idea of eliminating discretion in the management altogether in the matter of admissions. While interpreting the term 'appropriate authority' the Supreme Court dealt with it to mean the Government, University or other authority which was competent to grant permission to establish or grant recognition to a professional college. In view of the position of law laid down in *Unni Krishnan's case* (supra), it cannot be said that the University can grant admissions by migration at its sweet will and without following the procedure free from doubts and suspicion. Such procedure, policy or the Rule is required to be tested on the touch-stone of equality and fairness, if the admissions are found to be not based upon fairness or are the result of discrimination, the same are liable to be quashed.

(19) It has not been brought to our notice that the seats falling vacant which were intended to be filled up by migration were ever advertised affording opportunity to all eligible to approach the University for the purposes of migration under the specified circumstances. Right to equality cannot be achieved unless an opportunity is afforded to all similarly situated. Denial of opportunity to all could be made a basis for quashing of all the migrations. However, in the instant case none has complained regarding this aspect as all the parties have applied and approached the University for the grant of admission by migration.

(20) In order to show that the selection was fair, proper and not discriminatory it was obligatory for the respondent-University to

satisfy the Court regarding the tests applied or the procedure adopted to eliminate the apprehension of discrimination. Nothing has been brought before us for our perusal. It is true that the relevant Rules/Statutes does not envisage that merit is the sole criterion for migration but that does not absolve the University from its responsibility to show that the orders were passed fairly, impartially and uniformly on the basis of the criterion laid down and the uniform procedure adopted.

In the case of migration to B.D.S. Course even the recommendations of the Committee constituted for the purpose were not followed and completely ignored without assigning any reason. The action of the respondents in allowing migration and admitting the students to the 2nd year professional M.B.B.S./B.D.S. Course is not free from doubts. Even the right of equality has been proved to have been violated for the reasons noted herein above. The migration of the private respondents being in contravention of the fundamental rights is, therefore liable to be quashed.

(21) One of the conditions prescribed under the University Calendar is that besides having passed 1st Professional M.B.B.S. examination of the other University, the applicant must have passed the Medical Entrance Examination or where Medical Entrance Examination is not held Pre-Medical or its equivalent examination with atleast 50 per cent marks in the aggregate of the subjects of English, Chemistry (Organic and Inorganic), Physics and Biology. In the instant case, neither the petitioners nor the private respondents are shown to have passed the Medical Entrance Examination either from the State in which they were earlier admitted or in the State where the migration is sought for. It is also not on the record as to whether the Medical Entrance Test was held where the private respondents had got the admissions before their migration. Similar is the case of the petitioners seeking migration to the appellant University. The condition of passing the Medical Entrance Examination is of great importance and cannot be ignored on account of the intentional silence of the persons seeking migration to the appellant University. The purpose of the aforesaid condition is to see that meritorious students are admitted to undergo the M.B.B.S./B.D.S. Course and only such students are migrated for undergoing the rest of the course in the M.B.B.S. No person can be permitted to wriggle out of this condition which has been incorporated in the Calendar with the paramount object of providing migration to such candidates only who though eligible could not be accommodated in

that State on account of the paucity of seats or for other various reasons. Such persons who seek migration are required to have atleast qualified the Medical Entrance Examination, notwithstanding their merit. Only such candidates who have qualified in the Medical Entrance Examination by acquiring the minimum percentage of marks but were unable to get admission on account of various considerations in that State, and were admitted outside the State in other medical institution duly recognised by the Medical Council of India, could alone seek migration to that particular State where Medical Entrance Examination is a condition precedent for seeking admission to the professional course. Any other interpretation would defeat the very purpose sought to be achieved by the aforesaid condition prescribed under the University Calendar. A person who is shown to have not qualified by obtaining the requisite number of marks in the Entrance Examination cannot be rewarded for his inefficiency of low merit by granting him admission by way of migration. It is not disputed that in the State where the appellant-University is located a Medical Entrance Examination was held and all the claimants of the seat by migration are not shown to have appeared/qualified the said Medical Entrance Examination in that State. If none of them has appeared or qualified by obtaining the minimum requisite marks, he/she could not be granted admission by migration. Assuming but not admitting that appearance in the Medical Entrance Examination was not essential or the test was not held in the State, the claimants were required to shown that they had passed the Pre-Medical or equivalent examination with fifty percent marks in aggregate of the subjects of English, Chemistry (Organic and Inorganic), Physics and Biology. There is nothing on the record to hold that this condition had been complied with or not. A reference in the University Calendar that the candidates seeking migration were required to belong to the State of Haryana itself indicate that the reference to the Medical Entrance Examination is with respect to such examination held in that State. The appellant-University was required to consider this aspect while permitting migration and allowing private respondents admission in the 2nd Professional Examination of the M.B.B.S./B.D.S. As this condition has not been fulfilled, the order impugned in the writ petitions granting admission by migration in the M.B.B.S./B.D.S. Course to the private respondents is liable to be quashed.

(22) After relying upon the judgment of this Court in *Meenakshi Singla v. State of Punjab and others* (7), and *Rajiv Puri v. Punjab*

University and others' (8), and of the Supreme Court in *Khalid Hussain v. Commissioner and Secretary to Government of Tamil Nadu and others* (9), the learned Single Judge came to the conclusion that the selection must have been based upon academic merits of the candidate. While allowing the writ petition, the learned Single Judge chose not to cancel the migration but instead directed the respondents to permit migration of the writ petitioners by creating more seats. It was directed, "in the wake of the directions given if any additional seat is to be created to accommodate the petitioner, the same may be created by the University authorities" in Civil Writ Petition No. 13507 of 1993. However, while deciding C.W.P. No. 15971 of 1993, the learned Single Judge restricted the number of additional seats to be created to eight and directed the appellant University to consider the case of the petitioners on the basis of their merit in the 1st year of B.D.S. examination and admit only five more students i.e. 3 at Dental College, Rohtak and 2 at D.A.V. Centenary, Yamunanagar. The learned Single Judge further noted that one Munish Madan was granted migration from a college at Yamunanagar to Rohtak which was an inter College transfer and governed by different regulations. The migration of Munish Madan had been challenged mainly on the ground that the Vice-Chancellor of the appellant University without caring for the Rules-Instructions for the migration and for the stipulated period within which the applications could be submitted had ordered the migration of this respondent before the expiry of the period stipulated and was admitted in the Dental College, Rohtak on 14th September, 1993 in pursuance of the migration order.

(23) The judgment of the learned Single Judge to the extent it holds the migration to be against the provisions of law is up-held though for different reasons as noted herein above. However, the direction given to admit the writ petitioners by creating more seats cannot be up-held in as much as the Court has not jurisdiction to direct the creation of additional seats for accommodating such persons who approach the Court by way of writ petitions. The possibility of there being more meritorious candidates desirous of seeking migration cannot be ruled out. The illegality committed in favour of some privileged candidates cannot be directed to be repeated for those who come to the Court for seeking a similar

(8) 1992 (1) R.S.J. 47.

(9) 1987 (4) S.L.R. 598.

treatment. The creation of additional seats in professional Colleges require application of mind of the educational authorities who may need additional apparatus and staff for imparting education in the field. Without knowing or ascertaining the exact position of the staff and other requisite facilities for undergoing the course, the issuance of direction of creation of additional seats may not only adversely affect the Institution but is also detrimental to the interests of those who are directed to be provided additional seats. The Supreme Court in *Home Secretary, U.T. of Chandigarh v. Darshjit Singh Grewal and others* (10), even deprecated the practice of granting admission by the High Court by way of interim orders except in rare cases where non passing of such an order was likely to cause serious injury which could not be repaired later.

(24) Directing the grant of admission by the creation of additional seats on compassionate ground by the High Court or the Supreme Court was not approved by the Apex Court in *State of Punjab v. Renuka Singla* (11), wherein it was held :—

“The admission in Medical Course throughout India is governed by different statutory provisions, including regulations framed under different Acts. During last several years efforts have been made to regulate the admission to the different medical institutions, in order to achieve academic excellence. But, at the same time, a counter attempt is also apparent and discernible, by which the candidates, who are not able to get admissions against the seats fixed by different statutory authorities, file writ applications and interim or final directions are given to admit such petitioners. We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. It cannot be disputed that technical education, including medical education, requires infrastructure to core with the requirement of giving proper education to the students, who are admitted. Taking into consideration the infrastructure, equipment, staff, the limit of the number of admissions is fixed either by the Medical Council of India

(10) 1993 (4) S.L.R. 556.

(11) J.T. 1993 (6) S.C. 524.

or Dental Council of India. The High Court cannot disturb that balance between the capacity of the institution and number of admissions, on 'compassionate ground'. The High Court should be conscious of the fact that in this process they are affecting the education of the students who have already been admitted, against the fixed seats, after a very tough competitive examination. According to us, there does not appear to be any justification on the part of the High Court, in the present case, to direct admission of respondent No. 1 on 'compassionate ground' and to issue a fiat to create an additional seat which amounts to a direction to violate Section 10A and Section 10B (3) of the Dentists Act referred to above."

(25) The learned counsel appearing for the candidates who managed to get admission by migration have argued that even if the writ petitions are accepted and the migration is held to be not legal the order impugned should not be quashed as that would result in a great hardship to the students who have joined the new institution after migration. Reliance is placed upon the judgment of the Supreme Court in *Darshjit Singh's case* (supra) and of this Court in Civil Writ Petition No. 1745 of 1992 *Thapar Institute of Engineering and Technology, Patiala v. State of Punjab*, decided on 2nd September, 1994. We are not impressed by this argument and cannot permit the illegality to be perpetuated or the successful candidates being conferred with any uncalled for benefit in their favour. Once it is held that the migration has been procured by illegal means and in violation of not only the provisions of law but also the Constitution, no leniency can be shown in favour of those who have obtained such uncalled for benefits in their favour. In the instant case the successful candidates got admission in B.D.S. by migration with open eyes and the result regarding their fate clearly written on the wall, Manipulative admissions, herefore, cannot be permitted to be continued particularly when the action of the respondents granting migration,—vide order dated 19th October, 1993 (Annexure P/4) so far as B.D.S. Course is concerned was challenged in the Court within days thereafter. The candidates who have succeeded in getting migration were not allowed to continue by any specific order of the Court. Similar is the case of the respondents who have been migrated in the M.B.B.S. Course. Reliance of the counsel for the respondents on *Darshjit Singh's case* (supra) is misplaced in as much as in that case the respondents had been granted admission by the Court orders that the candidates had been proved to have been

studying in the institution for a period of over one . . . Supreme Court observed, "We are constrained to add that it would have been more appropriate if the High Court had not directed respondents to be admitted in the Chandigarh Engineering College by way of interim orders.....". It was further observed that even if the writ petition fails, the mis-chief of interim orders would be rectified in view of the change in situation, coupled with the lapse of time. This precisely the situation confronting us." Such is not the situation in the case before us.

(26) The Division Bench of this Court in *Thapar Institute of Engineering and Technology's case* (supra) also did not set aside the selection despite the dismissal of the writ petitions mainly on the ground that affected students had been granted admission on account of the court orders and that they had been continuing studies for over a sufficient period of time. In that case, the Court directed, "It is, however, observed that the students who were admitted on the basis of Court orders shall be permitted to continue with their studies and their admissions shall be regularised." No migrated student has been allowed to continue the study on the basis of the Court orders in the instant cases.

(27) Under the circumstances, the Letters Patent Appeals Nos. 78, 79, 80, 211 and 212 of 1994 are partly allowed. The impugned order of the learned Single Judge in so far as it directs the grant of admission to the writ petitioners before him by creating additional seats is set aside. The order of the learned Single Judge and the order of migration by which Ms. Nitasha Paul, Ms. Puneet, Ms. Bindu Bansal, Mr. Sumit Malik, Ms. Monika Bhasin, Ms. Pooja Batra, Mr. Manoj Mittal, Mr. Tarun Kumar Bhutani, Mr. Munish Madan, Ms. Anjula Girdhar, Ms. Shalu, Ms. Rashmi Majithia, Ms. Eru Arora, Puneet Sadana in B.D.S. course and Ms. Bhawana Narula, Manish Jain, Ms. Anjali Hooda and Ms. Anamika Bishnoi in M.B.B.S. Course were granted admission is set aside. The seats held by such respondents are declared vacant. The respondent-University is directed to advertise the vacancies and after getting the applications from the desirous students, make selection in accordance with the University Calendar by adopting a reasonable and uniform policy and standards for the said purpose. The merit of the students shall be kept as a condition for making selection for the purposes of migration for the students. Civil Writ Petition Nos. 8097, 8215, 8589, 9620, 7991, 8007 of 1994 and 16067 of 1993 shall also stand allowed to the extent indicated above.

R.N.R.