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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 12th September, 2023

\+ LPA 628/2023 & CM APPL. 46914/2023

UJJWAL SHORI (THROUGH HIS NATURAL GUARDIAN)

..... Appellant

Through: Mr. Kavindra Solanki and Mr. Nitin Kumar, Advocates.

versus

UNIVERSITY OF DELHI & ORS. ..... Respondents

Through: Mr. Anuj Aggarwal, ASC with Ms. Ayushi Bansal and Mr. Yash Upadhyay, Advocates for R-3.
Mr. Anurag Ahluwalia, CGSC with Mr. Tarveen Singh Nanda, GP for R-4.
Mr. Santosh Kumar, Ms. Akshita Singh and Mr. Adhitya Kamani, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J (Oral):

1. The Appellant, a minor represented through his father, filed a writ petition, being W.P.(C) 9340/2023, seeking a declaration that the eligibility condition for admission to MBBS/ BDS Courses of Faculty of Medical Sciences ("***FMSc***"), University of Delhi ("***DU***"), and Guru Gobind Singh Indraprastha University, ("***GGSIPU***") are *ultra vires* insofar as they disentitle the Appellant from being considered for admission under the category of "Delhi Quota"/ "Delhi Region Candidate". The aforesaid prayer was declined

in the judgment dated 16th August, 2023 passed by the learned Single Judge of this Court ("***impugned judgment***").

2. A brief narrative of the facts in the writ petition is as follows:

2.1. The Appellant as well as his father, are permanent residents of Delhi. Owing to the employment obligations of the Appellant's father with Bharat Petroleum Corporation Limited, the family moved to Kolkata in the year 2019. Appellant's father took up the role of Chief Manager (Legal) at Eastern Regional Office in Kolkata. As a result, the Appellant completed his education from 9th to 12th standard at a school in Kolkata. With the aspiration of pursuing an MBBS course, the Appellant appeared for the NEET-2023 examination. However, the Appellant argues that he is being unfairly and arbitrarily excluded from the category of "Delhi Quota"/ "Delhi Region Candidate" by the admission rules set forth by DU and GGSIPU ("***impugned rules***"), extracted hereunder:

2.1.1. The eligibility condition for admission under "Delhi Quota" to MBBS/ BDS Courses prescribed for FMSc, DU,[1] is reproduced as follows:

> *"(b) Qualifying Examination:*
>
> *(i) The educational qualification for admission is as per NEET conducted by National Testing Agency (NTA). Further to become eligible for 85% Delhi Quota, the candidate must have passed 11th and 12th standard examination under 10 + 2 system conducted by CBSE/Indian school certificate examination/Jamia Millia Islamia, New Delhi or any other equivalent examination from a recognized school situated within the NCT of Delhi only.(See Appendix 1)"*

2.1.2. Likewise, the relevant seat allocation rule of GGSIPU for a "Delhi Region Candidate",[2] is reproduced as follows:

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[1] Section-A, Clause 2(b)(i), Information Bulletin Undergraduate (MBBS/ BDS) Admission 2022-2023, University of Delhi, Faculty of Medical Sciences.

[2] Chapter-5, Clause 5.0.1, Admission Brochure for Academic Session 2023-24, GGSIPU.

"5.0.1 Important Note

Delhi Region 85% of the sanctioned Intake:

The candidate shall be considered as Delhi Region Candidates if they have passed the qualifying examination from any school / institute located in NCT of Delhi or from any college / institute affiliated to GGSIP University. All such candidates shall be notified as "Delhi Region Candidates" for the purpose of counselling for admission."

3. The impugned judgment notes that the grievance urged in the petition is no longer *res integra* in light of several judgments of the Supreme Court and this Court, which have already dealt with the same issue. Nonetheless, the Appellant has filed the present intra-court appeal, raising the same grievance and assailing the impugned judgment.

GROUNDS OF APPEAL

(I) *Preliminary Objection to the Applicability of the DPCI Act*

4. As an initial point of contention, Appellant argues that the Learned Single Judge has erroneously construed the scope of Section 3(f) of the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-exploitative Fee and Other Measures to Ensure Equity and Excellence) Act, 2007 ("***DPCI Act***"). He argues that the DPCI Act is specifically designed to govern unaided educational institutions affiliated to a university offering degree, diploma, and certificate courses. Contrary to this, the relief in the present case is sought *qua* institutions that are entirely aided and receive recurrent financial support, or grant-in-aid, from a Union Territory, the Central Government, and the University Grants Commission.

(II) *Non-Consideration of Fortuitous Circumstances and Permanent Residency*

5. Further, Appellant urges that the Learned Single Judge has erred by

failing to consider the extraordinary and fortuitous circumstances that compelled the Appellant to complete his 11th and 12th standard education outside Delhi. Specifically, these circumstances arose due to the service conditions of the Appellant's father. The Appellant was born and raised in Delhi, and his education until 2019 was conducted within this jurisdiction. The Appellant possesses immovable assets in Delhi and substantiates his permanent residency through his Aadhar Card. In this background, it is contended that the impugned rules of DU and GGSIPU apply detrimentally upon candidates who are children of government or PSU employees with transferable jobs, thereby depriving them of the opportunity to secure admission based on their permanent domicile.

(III) *Incorrect Application/ Non-Consideration of Judicial Precedents*

6. The learned Single Judge has incorrectly applied the holding of the judgment of the Hon'ble Supreme Court in ***Anant Madaan v. State of Haryana & Ors.***[3] and ***Meenakshi Malik v. University of Delhi & Ors.***,[4] and as also failed to correctly appreciate the rulings of High Court of Bombay, in ***Priya Kedar Gokhale v. State of Maharashtra***,[5] ***Rajiv Purshottam Wadhwa v. State of Maharashtra***,[6] and ***Archana Sudhakar Mandulkar v. Dean, Govt. Medical College, Nagpur and Ors***.[7]

ANALYSIS AND FINDINGS

7. We have carefully evaluated the submissions presented before us and are unconvinced by the arguments raised in the present appeal. In our

[3] (1995) 2 SCC 135.
[4] (1989) 3 SCC 112.
[5] 2022 SCC OnLine Bom 11645.
[6] 2000 SCC OnLine Bom 359.
[7] 1986 SCC OnLine Bom 262.

assessment, the learned Single Judge has undertaken a comprehensive examination of the issues at hand, including due consideration of the judgments cited by the Appellant.

8. First, we turn our attention to the judgment of the Supreme Court in ***Meenakshi Malik***, on which the Appellant has strenuously relied upon. In the said case, petitioner had to leave India for academic pursuits due to her father's posting to Nigeria. Consequently, the Court found it justifiable to relax the stringent condition mandating the completion of the last two years of schooling in Delhi. The pertinent excerpt from the judgment reads as follows:

> *"4. It seems to us that the qualifying condition that a candidate appearing for the Entrance Examination for admission to a Medical College in Delhi should have received the last two years of education in a school in Delhi is unreasonable when applied in the case of those candidates who were compelled to leave India for a foreign country by reason of the posting of the parent by the Government to such foreign country. There is no real choice in the matter for such a student, and in many cases the circumstances of the student do not permit her to continue schooling in India. It is, of course, theoretically possible for a student to be put into a hostel to continue her schooling in Delhi. But in many cases this may not be feasible and the student must accompany a parent to the foreign country. It appears to us that the rigour of the condition prescribing that the last two years of education should be received in a school in Delhi should be relaxed, and there should be no insistence on the fulfilment of that condition, in the case of students of parents who are transferred to a foreign country by the Government and who are therefore required to leave India along with them. Rules are intended to be reasonable, and should take into account the variety of circumstances in which those whom the rules seek to govern find themselves. We are of opinion that the condition in the prescription of qualifications for admission to a medical college in Delhi providing that the last two years of education should be in a school in Delhi should be construed as not applicable to students who have to leave India with their parents on the parent being posted to a foreign country by the Government.*
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> *5. Accordingly, the denial of admission to the petitioner to a seat in one of the Medical Colleges in Delhi must be held to be unreasonable. It is not disputed that if the condition of schooling for the last two years in a school in Delhi is*

removed from the way, the petitioner would be entitled to admission in a Medical College in Delhi. In the circumstances, the petitioner is entitled to an order directing the respondents to admit her to one of the Medical Colleges in Delhi."

[Emphasis supplied]

9. However, it is significant to note that the decision in ***Meenakshi Malik*** was revisited and distinguished in the subsequent case of ***Anant Madaan***, wherein the Supreme Court made the following distinction:

"11. The appellants drew our attention to a decision of this Court in Meenakshi Malik v. University of Delhi [(1989) 3 SCC 112 : (1989) 2 SCR 858] where the father of the candidate was in government service. He was posted by the Government outside India. As the parents were compelled to go outside India, the children were also required to go with their parents. This Court considered this as a hard case. It held that the qualifying condition that the candidate should have received the last two years of education in a school in Delhi, should be relaxed in that case as the candidate was compelled to leave India for a foreign country by reason of the posting of her parents by the Government to such foreign country. The Court observed that there was no real choice in the matter for such a student and hence the rigour of the condition prescribing that the last two years of education should be received in Delhi should be relaxed in that case.

12. None of the appellants who are before us are in a position similar to that of the appellant in the above case. In fact, the parents of Anant Madaan, Bharat B. Dua and Shalini Jai,1, are in Haryana. In the case of Nandita Kalra the parents have voluntarily taken employment outside the State of Haryana. They are not in the same situation as the parents of Meenakshi Malik [(1989) 3 SCC 112 : (1989) 2 SCR 858] . Therefore, the relaxation which was given by this Court in the case of Meenakshi Malik [(1989) 3 SCC 112: (1989) 2 SCR 858) cannot be given to any of the appellants before us."

[Emphasis supplied]

10. In paragraph 11 extracted hereinabove, the Court elaborated on the unique circumstances that led to the relaxation of eligibility criteria in the ***Meenakshi Malik***. The crux of the reasoning was that the candidate had no real choice but to leave India due to her parents' governmental posting in a foreign country. Under such compelling circumstances, the Court deemed it

appropriate to relax the requirement of completing the last two years of schooling in Delhi. The paragraph 12 of the said judgment explicitly clarifies that none of the appellants in the ***Anant Madaan*** shared similar circumstances to those in ***Meenakshi Malik***. Particularly, the parents of the appellants in ***Anant Madaan*** were either residents of Haryana or had voluntarily sought employment outside the state, thus differentiating their situation from that of ***Meenakshi Malik***. Consequently, the Court ruled that the relaxation granted in ***Meenakshi Malik*** would not extend to the appellants in ***Anant Madaan***. In light of these findings, the relaxation in the eligibility criteria extended in ***Meenakshi Malik*** stood distinguished and restricted to the facts of the said case.

11. The ***Anant Madaan*** decision adds another dimension to the issue at hand. In that case, the Supreme Court ruled that providing preference in admissions based on residence or institutional preference is permissible as long as it does not result in total reservation based on these factors. The Court relied on another judgment of the Supreme Court which drew a distinction between the place of birth and residence, and held that preference based on residence, in educational institutions, is constitutionally valid. In paragraph 8 of the ***Anant Madaan*** decision, the Court explicitly stated that the requirement for candidates to have completed their school education in a particular state could not be deemed arbitrary or unreasonable as long as the criterion did not result in total reservation based on residential or institutional preference. The above referenced paragraph reads as under:

> *"8. In view of the above facts, we have to consider whether the condition requiring a candidate to have studied in 10th, 10+1 and 10+2 classes in a recognised institution in the State of Haryana, can be considered as arbitrary or unreasonable. It is by now well settled that preference in admissions on the basis of residence, as well as institutional preference is permissible so*

> *long as there is no total reservation on the basis of residential or institutional preference. As far back as in 1955, in the case of D.P. Joshi v. State of Madhya Bharat [(1955) 1 SCR 1215: AIR 1955 SC 334), this Court making a distinction between the place of birth and residence, upheld a preference on the basis of residence in educational institutions."*
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> [Emphasis Supplied]

12. The eligibility criteria prescribed in the impugned rules is similar to the eligibility conditions upheld in ***Anant Madaan***. They do not lead to total reservation based on residential or institutional preference. Since such criteria has been constitutionally validated, the impugned rules framed by DU and GGSIPU cannot be held to be arbitrary or unreasonable. Consequently, the learned Single Judge's reliance on ***Anant Madaan*** and conclusions derived thereon are in line with existing jurisprudence.

13. In evaluating the validity of the impugned rules, it is essential to consider the framework that bifurcates seat allocation. Under this arrangement, 85% of the seats are reserved for candidates who have completed their 11th and/ or 12th standard education in a school located in Delhi. The 15% of the seats are open for competition on an all-India basis. Appellant's right to compete for the 15% of the seats open to candidates from across India remains unimpaired. Therefore, it would be incorrect to assert that the Appellant's opportunity for admission has been entirely foreclosed.

14. We must also take note of the decision of the Division Bench of this Court in its judgment in ***Vished Through Legal Guardian Sushil Kumar v. Directorate of Higher Education and Ors.***,[8] wherein the validity of the condition to be classified as "Delhi candidate" as per Section 3(f) of the DPCI Act fell for consideration. For convenience the said provision is extracted as

[8] Neutral Citation No. 2012:DHC:5066-DB. Judgment dated 21st August, 2012.

under:

> *"(f) 'Delhi candidate' means a candidate who has appeared or passed the qualifying examination from a recognised school or institution situated in Delhi;"*

15. In the said decision, the Court held that the aforesaid eligibility condition for treating a candidate as a "Delhi candidate" is not arbitrary or unreasonable, thus, validating the provision of Section 3(f) of the DPCI Act. The relevant portion of the decision is as under:

> *"15. It is in this scenario we have to adjudge as to whether the definition of 'Delhi candidate' is arbitrary or discriminatory. When we examine the matter in the aforesaid perspective, we do not find it to be so."*

16. In ***Vished***, this Court not only upheld the validity of eligibility condition set out under the DPCI Act as neither arbitrary nor unreasonable but also emphasized that determining the eligibility conditions for admission primarily falls within the purview of the legislature.

17. At this juncture, it is pertinent to note that the eligibility condition scrutinized in ***Vished*** bears resemblance to the impugned rules in the present appeal. Additionally, it is worth mentioning that GGSIPU, whose seat allocation rule is also contested here, is explicitly governed by the aforementioned DPCI Act. Thus, given that the validity of Section 3(f) of the DPCI Act was affirmed in ***Vished***, it underscores that both GGSIPU and DU are within their legal rights to establish such eligibility conditions.

18. The judgments of the High Court of Bombay cited by the Appellant, were rendered based on the specific facts and circumstances unique to those cases. They cannot be directly extrapolated to negate or invalidate the impugned rules at issue here.

19. The legislative prerogative to define eligibility conditions, as upheld in

previous legal precedents, must take precedence. The existing framework provides avenues for the Appellant to compete for admission, albeit in a limited capacity. While the Appellant's individual circumstances warrant understanding and consideration, they do not suffice to invalidate the impugned rules, which are designed to serve policy objectives and have been found to be legally tenable. In light of the aforementioned decisions, the Court finds that the challenge to the impugned rules is unsustainable.

Acknowledging the Limitations of the Impugned Rules

20. While the established jurisprudence leaves little scope for judicial intervention, certain aspects of the case warrant our attention. The Appellant has pointed out his anomalous situation of being effectively "stateless" in terms of educational quota as he cannot avail state quota benefit for admission to educational institutions of either Delhi or West Bengal. Despite completing his 9th to 12th standard education in West Bengal, he cannot qualify for quota benefits of that state as the candidates are also required to have resided in West Bengal continuously for at least 10 years, apart from having cleared their 12th standard exam in West Bengal. If a candidate has pursued their 10th or 12th standard or both from outside West Bengal, their parents need to be permanent residents of West Bengal with at least 10 years of continuous residence. The Appellant unfortunately fails to fulfil this criteria due to the timings of his father's posting.

21. The Appellant aspires to be considered under the "Delhi Quota" or as a "Delhi Region Candidate" for his undergraduate studies. His grievance is focused on the eligibility criteria in the impugned rules which deprive him of the ability to qualify for the Delhi state quota owing to his education outside Delhi due to unforeseen circumstances, even though he possesses strong ties

with Delhi and has pursued previous education for substantial number of years in the State. However, in our view, striking down the impugned rules could have far-reaching consequences that extend beyond the immediate concerns of the Appellant. Specifically, it would usher a surge of students studying in different corners of the country to vie for admission to medical courses under Delhi quota, over and above the all-India seats. This is because in such a scenario, the distinguishing criteria to categorize candidates as "Delhi Quota"/ "Delhi Region Candidate" would be non-existent. Furthermore, viewed from another angle, the rules in-question confer advantages to candidates who have completed their 11th and/ or 12th standard education in Delhi irrespective of their birthplace or permanent residency in the state of Delhi. This underscores that the rules have multifaceted intentions and serve multiple objectives.

22. Nonetheless, the impugned rules, as they stand, have the potential of excluding *bona fide* students who may have a legitimate claim as residents of Delhi. This is a matter of concern that merits attention. The impugned rules prejudice students who are otherwise deeply rooted within Delhi but are penalized for circumstances beyond their control which prevented them from completing their schooling in Delhi, such as their parents' employment. To this end, we acknowledge that there may be room for legislative refinement. Government of NCT of Delhi must revisit the existing rules or consider drafting new rules on the eligibility criteria in admissions to educational institutions in respect of domicile/ permanent residency status. Such revision/ new rules should reflect the realities and complexities of life which often force students to leave their resident state on account of fortuitous circumstances. The guidelines/ rules should determine the criteria for designating someone as a domicile or permanent resident for admissions to educational institutions

and/or for granting suitable relaxation to genuine residents of Delhi who are rendered ineligible due to fortuitous circumstances. We wish to make it clear that this exercise is entirely the prerogative of the State. It would be their discretion to frame guidelines that best serves the interest of Delhi residents. The State Government is encouraged to take appropriate action in line with the facts leading to this judgment.

23. We have also been apprised that deliberations on this matter are currently underway. The Delhi Legislative Assembly is actively considering a proposal to amend the eligibility criteria for a "Delhi Candidate" in the DPCI Act, with the aim of incorporating the criteria of being a resident of Delhi. In March, 2022, the Speaker of the Delhi Legislative Assembly referred the issue to the Education Committee, Delhi Vidhan Sabha. We hope that the Committee and the Government will take suitable action at the earliest.

24. Registry is directed to serve a copy of this judgment to Secretary, Directorate of Higher Education, Government of NCT of Delhi, and Secretary, Department of Law, Justice & Legislative Affairs, Government of NCT of Delhi, forthwith, for appropriate action.

25. With the above direction, the present appeal is disposed of.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

SEPTEMBER 12, 2023/*nk*