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THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH AT JABALPUR

(DIVISION BENCH)

Writ Petition No.6509/2019

Association of Private Universities, Madhya Pradesh and another

..... Petitioners

Vs.

State of Madhya Pradesh and others

..... Respondents

Coram:

Hon'ble Shri Justice Mohammad Rafiq, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Presence:

Shri Siddharth R. Gupta, learned counsel for the petitioners.

Shri Bramhadatt Singh, learned Government Advocate for respondent Nos.1 & 2/State.

Shri Anoop Nair, learned counsel for the respondent No.3/Medical Council of India.

Whether approved for reporting : **No.**

Heard on: 25.8.2021

O R D E R

(*Passed on this 21st day of September, 2021*)

Per : Mohammad Rafiq, Chief Justice:

This writ petition has been filed by the Association of Private Universities, Madhya Pradesh and Shri J.N. Chouksey, Chairman &

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Chancellor of one such Private University, challenging constitutional validity of Rule 2(13) read with Entry 3 and 4 of Schedule I of the Madhya Pradesh Medical Admission Rules, 2018 (for short the "**Admission Rules of 2018**") framed under **Madhya Pradesh Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007** (for short "**the Act of 2007**") as being violative of Articles 14 and 19(1)(g) of the Constitution of India and repugnant to Regulation 9 and other provisions of the Medical Council of India Postgraduate Education Regulations, 2000 (for short **"Regulations of 2000"**). Even though the writ petition also contains a prayer challenging Rule 4(2) read with Entry 3 of Schedule I of the said Admission Rules pertaining to 15% NRI seats but in the course of hearing, the learned counsel for the petitioners confined his argument to the first prayer keeping the second issue open.

2. Petitioner No.1 is an association of the private universities functioning in the State of Madhya Pradesh, registered and approved under the Act of 2007. The members of the petitioner association are those private universities which are imparting medical education in undergraduate as well as postgraduate courses. The petitioner No.2 is Chairman and Chancellor of LNCT University which runs and operates LN Medical College Hospital and Research Centre, Bhopal. He has been made as one of the petitioners, apart from being member of the Association, in his capacity as a citizen for invocation of fundamental right under Article 19(1)(g) of the Constitution of India. The members of the petitioner association claim the right to admit the meritorious students

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from the merit list prepared by National Eligibility-cum-Entrance Test (for short "NEET"). Rule 2(13) of the aforesaid Rules prescribes "Eligibility" in Rule 2(ङ) as what is stated in Schedule I appended thereto. The petitioners are aggrieved in particular by Entry 3 & 4 thereof. Entry 3 pertains to diploma and degree of MD/MS PG Study Course, clause 5 whereof requires that a candidate seeking admission has to be local resident (permanent resident/स्थानीय निवासी (मूल निवासी) of the State of Madhya Pradesh, however, relaxation shall be available (a) in case of those students who have passed out MBBS examination from Medical Colleges situated in the State of Madhya Pradesh and (b) in case of non-availability of students for admission by any of the above two streams, the aforesaid restriction would stand relaxed in the second round for all other categories of students. Clause 4 of the Entry 4 of the Schedule I of the Admission Rules of 2018 has been similarly worded in respect of admission to MDS (Master of Dental Surgery).

3. We have heard Shri Siddharth R. Gupta, learned counsel for the petitioners, Shri Bramhadatt Singh, learned Government Advocate for respondent Nos.1 and 2/State and Shri Anoop Nair, learned counsel for respondent No.3/Medical Council of India.

4. Shri Siddharth R. Gupta, learned counsel for the petitioners argued that there cannot be 100% reservation on the ground of domicile residence in study course of higher levels in medical education, specifically for admission to postgraduate medical courses. It is argued that the Entry 3 and 4 of the impugned Schedule throws the seats open to non-domicile i.e. out of State category candidates only if the students domiciled in the

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Date: 2021.09.21 18:07:25 IST

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State of M.P. are not available in the first round. In that case also, the first preference has been given to students who have passed out MBBS from any Medical College situated in the State of M.P. The non-domiciled students are strictly non-eligible. It is only when the students from both the first two categories are not available, that admission may be offered to non-domiciled candidates in the second round. Relying on the judgment of Supreme Court in **Dr. Pradeep Jain vs. Union of India** reported in **(1984) 3 SCC 654**, learned counsel for the petitioners argued that the Supreme Court in that case, almost four decades ago, clearly held that reservation in PG medical courses on the ground of domicile or being resident of a particular State is discriminatory, violative of Article 14 and is unconstitutional. The Supreme Court, however, observed that certain percentage of seats may be reserved on the basis of 'institutional preference' in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same medical college or university but such reservation should not in any event exceed 50 per cent of the total number of open seats available for admission to the post-graduate course. Ratio of the aforesaid judgment of three-Judge Bench of the Supreme Court has been reiterated by five-Judge Constitution Bench of the Supreme Court in **Saurabh Chaudari vs. Union of India** reported in **(2003) 11 SCC 146** which in para 24 and 25 specifically dealt with somewhat similar provisions and held that the expression "place of birth" is not synonymous to the expression "domicile" and "residence" and they reflect two different concepts flowing respectively from Article 15(1) and

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Article 16(2) of the Constitution of India. The Supreme Court in **Nikhil Himthani vs. State of Uttarakhand** reported in **(2013) 11 SCC 237,** dealing with a case relating to admission to PG medical courses held that the students cannot be denied admission only on the ground of not being a domicile of the State of Uttarakhand or having not passed out Uttarakhand PMT and admitted in the MBBS course. The relevant clauses and conditions so providing in the State Brochure were struck down. The Supreme Court revisited this issue in **Vishal Goyal vs. State of Karnataka** reported in **(2014) 11 SCC 456** holding that reservation cannot be made on the grounds of domicile or possessing/being a candidate of 'Karnataka Origin'. Similarly, in **Dr. Kriti Lakhina and others vs. State of Karnataka and others** reported in **(2018) 17 SCC 453** whilst dealing with the eligibility criteria of being a candidate of 'Karnataka Origin', the Supreme Court held that excellence cannot be compromised by any other consideration in the case of admissions to such higher medical courses as the same would be detrimental to the interest of the nation and would also affect the right to equality of opportunity under Article 14 of the Constitution of India. The relevant eligibility condition providing eligibility criteria of 'Karnataka Origin' was therefore struck down.

5. Shri Siddharth R. Gupta, learned counsel for the petitioners submitted that giving preference on the basis of domicile leads to loss of excellence as also merit in the case of admissions to medical courses whether it is UG or PG. For example, if in the first round of All India Quota, there is a candidate who has secured around 600 marks out of 720,

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then he shall be made to wait and not allowed to take admission in a private medical college of the State, to give way to a much lesser candidate in merit, possessing say; only 450 marks out of 720 only because the latter candidate is a domicile of the State of Madhya Pradesh. Thus, it is a clear case of loss of merit and excellence of students whilst sticking to the reservation policy on the basis of domicile by the State. Relying on the judgment of Supreme Court in **Sharvil Thatte and others vs. State of Maharashtra and others** in **W.P. No.1814 of 2018**, the learned counsel for the petitioners argued that the State of Maharashtra in that case restricted the eligibility condition for admission to PG courses to domicile of State of Maharashtra. The Division Bench of High Court vide its judgment dated 22.02.2018 quoting all the aforesaid judgments, struck down the clause and declared the same to be unconstitutional qua the PG courses. The Supreme Court in **State of Maharashtra and others vs. Dr. Sharvil Thatte and others** reported in **(2018) SCC OnLine SC 444** dismissed the SLP preferred by the State of Maharashtra affirming the judgment of Bombay High Court.

6. Shri Siddharth R. Gupta, learned counsel for the petitioners submitted that the concept of 'institutional reservation' applies only in the same university or same college. A candidate becomes eligible for admission to PG course after passing out MBBS from the same College or the same University or from another college affiliated to the same University. Therefore, the 'concept of institutional preference/reservation' cannot apply when a student has done MBBS UG from one college under a different University and claims 'institutional preference/reservation' to

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Date: 2021.09.21 18:07:25 IST

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an altogether different private medical college affiliated to a private university established under a separate enactment. It cannot be applied on a Statewide level on a generic basis. Referring to the provisions of the Act of 2007, it is argued that the private universities are established under the provisions of the said enactment as altogether different entities with separate seal, name and identity. They have no connection and nexus with the operation of the State Government or any University. They have their own system and pattern of conducting examinations and declaration of results in terms of Ordinances and Statutes framed by them. The role of State Government in their case is very minimal and that too at the stage of conducting a common counseling for admissions to the medical colleges and allotting them students purely as per merit. The concept of 'institutional reservation' in private medical colleges would apply only when the concerned student has passed out MBBS course from a medical college affiliated to the very same private university.

7. Shri Siddharth R. Gupta, learned counsel for the petitioners argued that impugned clause giving preference to domicile student to the extent of 100% seats, completely eliminates competition with far more meritorious candidates from outside the State, runs foul of Article 14 of the Constitution of India. The 'reasonable object' which is sought to be achieved by making such an omnibus provision excluding competition, merit and excellence at the national level, besides being arbitrary, is highly discriminatory. Moreover, the respondents have not clarified as to why candidates who are ineligible on the grounds of domicile or residence can become eligible only because they have done MBBS from a medical

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Date: 2021.09.21 18:07:25 IST

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college situated within the territorial limits of the State. The impugned clause results in complete freezing of seats in favour of candidates who are either domicile of M.P. or who have done their MBBS from the medical colleges of the State. Reservation in excess of 50%, howsoever laudable, is constitutionally impermissible and unacceptable. The impugned clauses 3 and 4 of Entry 3 are thus *ultra vires* Article 14, 19(1)(g) and 21 of the Constitution of India. It is argued that the impugned clause in the Schedule also runs contrary to MCI PG Regulations, 2000 and, therefore, unconstitutional and *ultra vires* Article 245 read with Entry 66, List I, VII Schedule of the Constitution of India as it militates against the very concept of national merit and admissions on the basis of excellence at the national level. It is argued that NEET is a national eligibility entrance test introduced for the purpose of ensuring observance of merit for admission to medical course at the national level and removal of regional and state level disparities in the admission process for ensuring a nationwide flow and intermingling of meritorious students from one region to another. Reliance in support of this argument is placed on the judgment of Supreme Court in **Christian Medical College Vellore Association vs. Union of India and others** reported in **(2020) 8 SCC 705**.

8. Shri Siddharth R. Gupta, learned counsel for the petitioners referred to the judgment of the Supreme Court in **Modern Dental College, vs. State of Madhya Pradesh** reported in **(2016) 7 SCC 353** wherein it has been held that the right of professional institutions to establish and manage educational institutions was finally regarded as an 'occupation'

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Date: 2021.09.21 18:07:25 IST

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befitting the recognition of this right as a fundamental right under Article 19(1)(g) in **T.M.A. Pai Foundation vs. State of Karnataka** reported in **(2002) 8 SCC 481**. It is, therefore, argued that right to have their seats filled from students of their choice is a fundamental right of the private medical colleges/universities. The only obligation is that the selection process needs to be fair, transparent and non-exploitative. The restrictions placed on such rights have to be just on the principles of being 'manifestly arbitrary', 'unreasonable', disproportionate', irrational' and 'discriminatory'.

9. Learned counsel for the petitioners submitted that the impugned clause in the Schedule providing reservation for domicile and permanent residence of Madhya Pradesh as also to the students who have completed MBBS from Madhya Pradesh is *ultra vires* the Act of 2007, which in its Section 8 confers only power to be prescribed by rules by the State Government providing reservation of seats in private medical colleges, restricted only to Scheduled Castes, Scheduled Tribes and Other Backward Classes. But there is no delegation of power or any authority to frame rules making reservation of any other kind of categories including on the basis of domicile. Section 12 of the said Act confers power on the State Government to make rules for carrying out the purposes of this Act, which too cannot go beyond the scope of Section 8 of the Act of 2007. Relying on the judgment of the Supreme Court in **Prem Chand Somchand Shah vs. Union of India and others** reported in **(1991) 2 SCC 48**, it is argued that the impugned reservation on the basis of domicile in the Medical Colleges in the State has been provided without

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Date: 2021.09.21 18:07:25 IST

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application of mind, bereft of any prior empirical study, survey, reasoning etc and, therefore, is violative of Articles 14 and 19 of the Constitution of India. Reliance in support of this argument has been placed on the judgment of the Supreme Court in **Kailash Chand Sharma and others vs. State of Rajasthan and others**, reported in **(2002) 6 SCC 562** wherein it was held that any classification for the purposes of reservation or providing any kind of benefit/concession/advantage by the State Government must be preceded by a proper and thorough survey and empirical study. Absence of such proper exercise, benefits/concession for reservation are discriminatory, arbitrary and liable to be struck down. It is argued that Entry 3 and 4 in the Schedule I appended to the Admission Rules of 2018 are unconstitutional and discriminatory for treating different/unequal categories of Medical Colleges equally, viz. the Private Unaided Medical College at par with Government Medical Colleges. Reliance in this respect has been placed on the judgment of the Supreme Court in **Binoy Viswam vs. Union of India and others** reported in **(2017) 7 SCC 59** wherein the Supreme Court held that equals should not be treated alike and unlikes should not be treated alike. Only likes should be treated alike.

10. Learned counsel for the petitioners has produced on record the chart showing the data of admission into PG courses in Index Medical College, Indore in respect to the year 2018-19, out of total number of 55 students, 50 M.P. domicile and 5 non-domicile; in the year 2019-20 out of total number of 82 students, 71 M.P. domicile and 11 non-domicile; in the year 2020-21 out of total 84 number of students, 73 MP domicile and 11 non-

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Date: 2021.09.21 18:07:25 IST

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domicile, were admitted. In respect of LN Medical College, Hospital & Research Centre, Bhopal in the year 2018-19, 38 M.P. domicile and 9 non-domicile students; in the year 2019-20, 40 M.P. domicile and 16 non-domicile students; in the year 2020-21, 43 M.P. domicile and 15 non-domicile students were admitted. In respect of People's College of Medical Sciences & Research Centre, Bhopal in the year 2018-19, 30 MP domicile, 3 non-domicile students; in the year 2019-20, 23 M.P. domicile and 3 non-domicile students and in the year 2020-21, 22 MP domicile and 3 non-domicile students, have taken admission in PG courses. Learned counsel for the petitioners submitted that judgment of the Supreme Court in **Dr.Tanvi Behl (supra)** deals with the State quota seats in the government medical colleges and does not mention anything about the seats with private medical colleges. Therefore, decision of the present case should not await the answers to the reference by the Larger Bench of the Supreme Court in **Dr.Tanvi Behl (supra).**

11. *Per contra*, Shri Bramhadatt Singh, learned Government Advocate for the respondent-State at the outset raised preliminary objection with regard to maintainability of the writ petition at the instance of the Association of Private Universities contending that no non-domicile candidate has ever raised any grievance as regards the impugned rule and, therefore, the Union of Private Universities/Private Medical Colleges can have no legitimate grievance with the impugned rule giving preference to the candidates domiciled in the State of Madhya Pradesh, as what they are concerned with is the allocation of the students and the fee which they charge. Moreover, the students who are not having domicile in the State of

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Date: 2021.09.21 18:07:25 IST

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Madhya Pradesh, yet if they have passed MBBS or BDS from any medical/dental college in the State of Madhya Pradesh, have also been treated at par with the domicile students of State of Madhya Pradesh and therefore also the petitioner-Association cannot have any grudge against the impugned policy. It is contended that since no candidate, not having domicile in the State of Madhya Pradesh, who can be said to be personally affected has come forward to challenge the impugned provision, the present writ petition at the instance of the Association of Private Universities deserves to be dismissed at the threshold.

12. Shri Bramhadatt Singh, learned Government Advocate relying on the judgment of the Supreme Court in **Dr. Tanvi Behl vs. Shrey Goel and others**, reported in **(2020) 13 SCC 675** argued that Supreme Court in that case while dealing with the same issue of legality and validity of domicile/residence based reservation for admission to the PG Medical courses, discussed each of the judgments which the petitioners are seeking to rely herein, especially the Constitution Bench judgment of Supreme Court in **Saurabh Chaudri (supra)** as also the earlier Constitution Bench judgment in **D.P. Joshi vs. State of Madhya Bharat** reported in **AIR 1955 SC 334** as well as the three-Judge Bench verdict in **State of U.P. vs. Pradip Tandon** reported in **(1975) 1 SCC 267**. The Supreme Court upon examining earlier three-Judge Bench judgment in **Pradip Tandon (supra)** observed that in that case reservation only on the basis of 'place of birth' was held to be offending Article 15 of the Constitution but the reservation made in favour of people of the hill areas of Uttarakhand was upheld, as the same was made for the benefit of socially and educationally

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Date: 2021.09.21 18:07:25 IST

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backward class of citizens. In **D.P. Joshi (supra)** the petitioner was admitted in a medical college in Madhya Bharat and challenged the rule as per which the residents of other states were made to pay capitation fees whereas the residents of Madhya Bharat not. It was held that 'domicile/residence' and 'place of birth' are different and hence contention that the rule is repugnant to Article 15(1) must fail. The Supreme Court further held that the classification based on residence within the State has a fair and substantial relation to the purpose of the law. This is to help to some extent the students who are residents of Madhya Bharat in the prosecution of their studies and to encourage education within its borders. Referring to the discussion made by the Supreme Court from para 15 to 18 in **Dr. Tanvi Behl (supra)**, the learned Government Advocate argued that Supreme Court clearly noted on the authority of the Constitution Bench judgment in **Saurabh Chaudri (supra)**, another Constitution Bench judgment in **D.P. Joshi (supra)** and three-Judge bench judgment in **Pradip Tandon (supra)** that "domicile/residence-based reservation is not impermissible" and that "domicile/residence-based reservation has not been taken as an anathema altogether to these admission processes." It was held that decision in **Pradeep Jain (supra)** pales into insignificance in view of what was subsequently held by the Constitution Bench in **Saurabh Chaudri (supra)**. The learned Government Advocate argued that in **Dr. Tanvi Behl (supra)** the Supreme Court distinguished the judgments in **Nikhil Himthani (supra)**, **Vishal Goyal (supra)** and **Kriti Lakhina (supra)** and held that "it is difficult to cull out that domiciles/residence-based

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Date: 2021.09.21 18:07:25 IST

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reservation is altogether disapproved". However, the manner of providing such reservation would always remain subject to requirement of rationality and reasonableness.

13. It is argued that judgment of the Supreme Court in **Vishal Goyal (supra)** and **Kriti Lakhina (supra)** are distinguishable because the offending provisions there gave preference to only a 'candidate of Karnataka origin", making them eligible to appear in the entrance test and the said expression was defined in such a manner so as to exclude a candidate who otherwise had domicile in the State or had completed MBBS or BDS from any institution in the State of Karnataka. The Supreme Court in **Dr. Tanvi Behl (supra)** clearly held that the generalized and blanket prohibition on domicile/residence-based reservation may not be workable in relation to the State Quota seats of PG medical courses. The different States and Union Territories have made different provisions for filling up these State Quota seats by making provisions with reference to domicile or residence seemingly for the purpose of ensuring that the candidates belonging to a particular State/UT, would be available for rendering service in that State/UT after post-graduation. If some provision as regards domicile/residence-based reservation is not made, the only other method of filling up these State Quota seats would be by way of institutional preference. But if the entire State quota seats are provided for institutional preference alone, it would result into undesirable consequences not permissible in law. The Supreme Court finally held that in the given scenario, it will be difficult to accept that domicile/residence-based reservation, as provided for filling up the

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Date: 2021.09.21 18:07:25 IST

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State Quota open seats, be held invalid altogether. It was, therefore, that the two-Judge bench of the Supreme Court in **Dr. Tanvi Behl (supra)** has referred the issue to the Larger Bench whether providing for domicile/residence-based reservation in admission to "PG Medical Courses" within the State Quota is constitutionally invalid and is impermissible and if not so, what should be the extent and manner of providing the same and if yes, then, as to how the State Quota seats, other than the permissible institutional preference seats, are to be filled up? It is argued that all those judgments which the petitioners are seeking to rely in support of their case are of no help to them till the question posed above are authoritatively answered by the Larger Bench of the Supreme Court.

14. On merits, Mr. Bramhadatt Singh, learned Government Advocate submitted that impugned provision clearly shows that there is no 'wholesale reservation' 'regardless of merit', much less on the basis of mere domicile of the State. There is no complete bar for admission of those candidates who are domiciled outside the State as they may participate in the first round itself if they have passed their MBBS/BDS examination from a medical/dental college situated in the State of Madhya Pradesh. As regard those who are not domiciled in the State or have not passed MBBS/BDS examination in the State, they are also eligible for admission but only from second round onwards in the event of non-availability of candidates from first two streams. It is submitted that preference to candidates passing MBB/BDS from a medical/dental college within the State of M.P. *stricto sensu* is not an institutional preference as it does not apply qua the same University or the same

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Date: 2021.09.21 18:07:25 IST

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college. In the present case, the concept of institutional reservation referred to by the petitioners is not attracted and that is also one of the reasons why reference has been made to the Larger Bench by the Supreme Court in **Dr. Tanvi Behl (supra)**. The Supreme Court in **Dr. Tanvi Behl (supra)** has taken note of domicile preference in the matter of admission to postgraduate medical courses as against the seats of State quota adopting almost the similar pattern. Shri Bramhadatt Singh, learned Government Advocate alternatively argued that the nature of institutional reservation provided for in the impugned rule is not barred under any statue or law laid down in any of the judgments of the Supreme Court or any High Court. In fact, the Supreme Court as also Regulation 9(4) of the MCI Regulations of 2000 permits the State Government to make reasonable laws for reservation of seats of State quota. Such reservation does not tend to discriminate between domiciles and outsiders as it was also observed by the Supreme Court in the case of **Pradeep Jain (supra)** that "any student from any part of the country would pass the qualifying examination of that university, irrespective of the place of birth or residence".

15. Shri Bramhadatt Singh, learned Government Advocate has produced on record the statement showing the admission of domicile and non-domicile students also indicating the details of those who are admitted because they passed out MBBS/BDS courses from out of State of M.P. regardless of whether they are domicile of M.P. or not. The details given by the learned Government Advocate also includes the data of the Government Medical Colleges with which we are not concerned in this

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Date: 2021.09.21 18:07:25 IST

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case. But it also includes the data of Private Medical Colleges including three Medical Colleges with regard to which the data of previous three years has been provided by the learned counsel for the petitioners. According to learned Government Advocate, in the year 2018-19 a total of 241 MP domicile students were admitted to PG courses in Private Medical Colleges and 22 such students were admitted who passed their MBBS examination from State and apart from that 10 non-domicile students were admitted. In respect of year 2019-20 a total number of 245 MP domicile students were admitted to PG courses and 42 such students who have passed their MBBS from M.P. apart from admission of 15 non-domicile students. In the year 2020-21, 374 MP domicile students were admitted to different Medical Colleges, 57 such students who have passed MBBS/BDS from State were admitted and 19 non-domicile students were admitted. On the strength of these figures, learned Government Advocate submits that in each of the past three years first of which pertains to period prior to enforcement of the Admission Rules of 2018, the students, who have passed MBBS/BDS from the State of M.P. were admitted. Thus it cannot be said that non-domiciles were completely excluded in the first round. Similarly, each year from second round of counseling itself, the seats got automatically opened up for the non-domiciles other than those who have passed MBBS/BDS from the State of M.P. for the obvious reason of non-availability of candidates who have registered themselves as domicile. Moreover, each year after the opening up of the seats for the non-domiciles other than those who have passed MBBS/BDS from the State of M.P., the domiciles and those who have passed MBBS/BDS from

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Date: 2021.09.21 18:07:25 IST

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the State of M.P. also continued to take admission till the Mop-Up and the subsequent rounds of counseling. Similarly, each year after the opening up of the seats, the number of non-domiciles, other than those who have passed MBBS/BDS from the State of M.P., have taken admission was very paltry as compared to the domiciles and those who have passed MBBS/BDS from the State of M.P.

16. Shri Bramhadatt Singh, learned Government Advocate has submitted that these statistics clearly show that the non-domiciles, other than those who have passed MBBS/BDS from the State of M.P. and were interested in taking admission in the seats available in the colleges of M.P. had ample opportunities to take admission from the second round of counseling itself each year. It is contended that impugned rules are in consonance with the MCI PG Medical Education Regulations, 2000 as after surrendering 50% seats of Government Colleges of the State for being filled by the Central Government under the All India Quota, the remaining seats, be it 50% of the State Government colleges or all seats of the private ones, fall in the category of State Quota and have to be mandatorily filled by the State Government by conducting counseling under Regulation 9A(3). By virtue of Regulation 9(4), the manner of reservation of the State Quota seats has to be as prescribed in "the applicable laws prevailing in the State", which as per the Constitution Bench judgment of Supreme Court in **Saurabh Chaudri (supra)** read with the recent judgment of the Supreme Court in the case of **Dr. Tanvi Behl (supra)**, is not impermissible. It is, therefore, submitted that by no stretch of imagination, it can be said that impugned rule is irrational,

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Date: 2021.09.21 18:07:25 IST

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unreasonable, arbitrary or otherwise tantamount to unreasonable classification. Argument of the petitioners that their right to admit more meritorious students is misconceived as every admitted student proves his/her caliber beyond doubt by clearing the NEET and no candidate has ever raised any grievance of being prejudiced by selection of a purportedly less meritorious candidate.

17. Shri Bramhadatt Singh, learned Government Advocate submitted that the object of giving preference to the domicile and institutional candidates is to ensure that more of those candidates take admission in the PG/specialized courses in the State whose possibility to serve the people of MP after completing of their PG course is more. The candidates who take admission are also made to fill-up bonds to ensure that they remain in the State to serve the local people after completing their courses. The chances of such candidates, who are domiciles of M.P. or otherwise who have spent 7 or 8 years of their life in the State of M.P., is more of their getting settled in the State of M.P. after completing their PG courses which would, in turn, be for the benefit of the people of the State. The learned Government Advocate, in support of this argument has also relied on para 6 and 7 of the judgment of the Supreme Court in **Nikhil Himthani (supra)**. Similarly, reliance has also been placed on para 4 and 13 of the judgment of **Vishal Goyal (supra)** and also para 14 of the judgment in the case of **Dr. Kriti Lakhina (supra)**. In all these judgments the concept of 'institutional preference' was understood in the context of the students who have passed their MBBS/BDS from the State in question. Even in **Dr.Tanvi Behl (supra)**, the Supreme Court while

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Date: 2021.09.21 18:07:25 IST

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interpreting the judgment in **Saurabh Chaudri (supra)** and in an earlier judgment of **Pradeep Jain (supra)** held that reservation on the basis of domicile/residence in admission to PG courses is not impermissible. It is argued that the petitioners have failed to show any judgment of the Supreme Court or any High Court which has turned down a rule giving preference to domiciles which does not tantamount to 100% reservation in the teeth of the fact that there are at least 10 States in India which have framed similar rules giving preference to domicile candidates. Reference in this connection is made to Annexure R-1 filed with the return filed by the State.

18. Shri Bramhadatt Singh, learned Government Advocate argued that while coordination and determination of standard in institutions for higher education is within the exclusive domain of the Union, medical education under List-III Entry 25 of the 7th Schedule of the constitution, though made subject to List I Entry 66, being the entry in concurrent list, the State is not denuded of its power to legislate on the manner and method for admissions to postgraduate medical courses. Learned counsel cited the Constitution Bench Judgment of Supreme Court in **Tamil Nadu Medical Officers Association and Others Vs. Union of India and Others**, **[2020 SCC OnLine 699**] in Para 106 of which it was held that the Union cannot by virtue of Entry 66 List I of the VIIth Schedule to the Constitution, provide for anything with respect to reservation/percentage of reservation and/or even mode of admission within the State quota, which powers are conferred upon the States under Entry 25 of List III. It was held that the State in exercise of that power can make provision for mode of

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Date: 2021.09.21 18:07:25 IST

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admissions, looking to the requirements and/or need in the concerned State. The Constitution Bench of the Supreme Court in **Tamil Nadu Medical Officers Association (supra)** approvingly quoted from three-judge Bench Judgment in **K. Duraiswami and another vs. State of Tamil Nadu and others** reported in **(2001) 2 SCC 538** and held that Regulation 9 (IV) of the MCI Regulations 2000 providing reservation for in-service candidate is *ultra vires* the Indian Medical Council Act, 1956 is beyond the legislative competence of the Union under Entry 66 List-I of the Seventh Schedule to the Constitution. It was held that Union has no power to make any provision for reservation more particularly, for in service candidate where the State in exercise of power conferred under Entry 25 List III can make special provisions like the one for providing separate source of entry for in service candidate seeking admission to Post Graduate Degree Courses. Providing reservation in favour of the domicile on the basis of residence is therefore not completely outside the purview of legislative competence of the state. This in any case is not a case of reservation, but is rather identifying the source from which the admissions have to be accorded. The Constitution Bench of the Supreme Court in **Tamil Nadu Medical Officers Association (supra)** has approved this line of reasoning propounded by three-judge Bench judgment of the Supreme Court in case of **K. Duraiswami & Anr. vs. State of Tamil Nadu & Ors. [(2001) 2 SCC 538]**, **AIIMS Students Union vs. AIIMS and Others [(2002) 1 SCC 428**] and **State of M.P. Vs. Gopal D. Tirthani [(2003) 7 SCC 83]** while holding that providing reservation to in service candidate, though in strict sense of the word may not be

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Date: 2021.09.21 18:07:25 IST

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reservation but is an identification of source of admission. Learned Government Advocate, therefore argued that the impugned provisions in the Admission Rules of 2018 is also aimed at identifying source of admission looking to the requirements and need of the State and is a valid piece of legislation and has a rational relationship with the object of making specialized doctors available in the State.

19. Mr. Anoop Nair, learned counsel appearing for the respondent-Medical Council of India submitted that the issue involved in the present matter is squarely covered against the respondents by the Constitution Bench judgment of the Supreme Court in **Saurabh Chaudri (supra)**, which has been recently followed by the Supreme Court in **Yatinkumar Jasubai Patel and others vs. State of Gujarat and others** reported in **(2019) 10 SCC 1**. Reference has been made to the Larger Bench of the Supreme Court in **Tanvi Behl (supra)** on the issue of validity of domicile/resident based reservation in admission to Postgraduate Medical Courses within the State quota, but the law as laid down by the Supreme Court in its various pronouncements, including in the cases of **Dr. Pradeep Jain (supra), Saurabh Chaudri (supra)** and **Yatinkumar Jasubai Patel (supra)** has to be followed in respect of institutional preference while granting admission to Postgraduate Medical Courses within the State quota for the current academic sessions 2020-21. It is argued that amended Clause 9(1) of the Post Graduate Medical Education Regulation, 2000 deals with the procedure for selection of candidates for Post Graduate Course in Medicine, which is binding on all the stakeholders. Clause 9(1) of the said Regulation provides that there shall

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Date: 2021.09.21 18:07:25 IST

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be a uniform entrance examination to all medical educational institutions at the Postgraduate level namely "National Eligibility-cum-Entrance Test' for admission to postgraduate courses in each academic year, which shall be conducted under the overall supervision of the Ministry of Health & Family Welfare, Government of India. The Medical Council of India vide notifications dated 11.03.2017 and 31.07.20217 have amended Clause 9A of the said Regulation so as to provide a common counselling both for the Government Medical Colleges and the Private Medical Colleges. It is argued that the question of institutional preference was considered for the first time by the Supreme Court in the case of **Pradeep Jain (supra)**, wherein it was held that it was constitutionally permissible for the States to have reservation of seats on the basis of institutional preference in postgraduate medicine courses for students who have passed MBBS course from the same University. However, such institutional reservation should not exceed the outer limit of 50% and the percentage of reservation of seats may be revised downwards from time to time depending upon the prevailing situation. The Supreme Court in **AIIMS Students' Union vs AIIMS** reported in **(2002) SCC 428** also held that a reasonable percentage of seats may be reserved for students in post graduate medicine courses on the basis of institutional preference. But this would violate the principle of merit as well equality of opportunity in matters of education. The Supreme Court in **Magan Mehrotra (supra)** while reiterating the principles laid down in the case of **Dr. Pradeep Jain (supra)** held that it is permissible to have reservation of seats at post graduate level on the basis of institutional preference. Referencing to the

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Date: 2021.09.21 18:07:25 IST

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Constitution Bench judgment in **Saurabh Chaudri (supra)** learned counsel argued that the Supreme Court in that case examined in great detail the constitutional validity of institutional preference and has upheld the same by observing that it does not violate the principles of equality enshrined under Article 14 of the Constitution of India. Mr. Anoop Nair, learned counsel for the Medial Council of India submitted that the preference given for admission solely on the basis of domicile in the State in the impugned rules is bad in law and cannot be supported being constitutionally impermissible.

20. We have given our anxious consideration to the rival contentions of the learned counsel for the parties and perused the material on record.

21. Even though Clause 9 (4) of MCI Postgraduate Medical Education Regulations, 2000 provides that the reservation of seats in Medical Colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories, but it is common ground between the parties that admissions are required to be made on the basis of common counseling with reference to Clause-9A of the said Regulations, sub-clause-(3) of which provides that counseling for all Postgraduate Courses in Medical Education Institutions in a State, including Medical Educational Institutions established by the Central Government, State Government University, Deemed University, Trust, Society or a Company Minority Institutions/Corporations shall be conducted by the State Government under the overall superintendence, direction and control of the State Government. Obviously, this would also include the Private Medical Colleges affiliated to Private Universities.

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Date: 2021.09.21 18:07:25 IST

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Clause- 9(7) of the said Regulations provides that in non-Governmental medical colleges/institutions, 50% of the total seats shall be filled by State Government or the Authority appointed by them, and the remaining 50% of the seats shall be filled by the concerned medical colleges/institutions on the basis of the merit list prepared as per marks obtained in NEET, but the provision stands eclipsed by Clause-9A which provides for common counseling for 100% seats even of the private medical colleges. In practice, therefore all the seats of private medical colleges are filled through common counseling out of the common merit list prepared on the basis of NEET. The primary question therefore would be whether under the impugned provision the State is competent to give priority to the students domiciled in the State of Madhya Pradesh including those who have passed out MBBS examination from anywhere in the State of Madhya Pradesh or would the provision for making such reservation or in other words, for identifying the source of admission is beyond its competence? The Constitutional Bench of the Supreme Court in **Tamil Nadu Medical Officers Association (supra)** has authoritatively held that the Union cannot with reference to its power under Entry 66 List I of the 7th Schedule of the Constitution provide for anything with respect to reservation/percentage of reservation and/or even mode of admission in the State quota and that this power is conferred upon the States under Entry 25 List III of 7th Schedule. The State Government therefore has power to make provision on mode of admissions, looking to the requirements and/or need in the concerned State. The aforesaid judgment was rendered in the context of reservation provided to in service candidate

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Date: 2021.09.21 18:07:25 IST

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reiterating the law earlier laid down by the Supreme Court in **K. Duraiswami (supra), AIIMS Students Union (supra) and Gopal D. Tirthani (supra)** which acknowledged the competence of the State Government to identify the source of admission for admission to post-graduation medical study courses. The relevant question however would still be as to what extent such a reservation or source of admission, can be made in respect of the seats in postgraduate medical courses in the private medical colleges? We may at this stage clarify that nature of provision that has been made in Entry 3 & 4 of Schedule-I of the MCI Regulations of 2000 cannot be *stricto sensu* described as an institutional preference as according to the first part of the impugned Entry No.3 while giving preference to a local resident of the State of Madhya Pradesh, within that very close has provided relaxation in favour of those who have passed out the MBBS/BDS examination from a medical/dental colleges situated anywhere in the State. In other words, a candidate having passed out MBBS/BDS examination from any college, whether the government or private, would be entitled to benefit of this relaxation by putting him at the same pedestal as that of a domicile candidate. In other words, a candidate who has passed out MBBS Course from any Medical College in the State of Madhya Pradesh need not be a permanent residence/domicile of the State of Madhya Pradesh and may belong to some other state. Moreover a candidate passing out MBBS examination from one college may be admitted on the basis of impugned rule to PG Medical Course to any other college, which need not to be affiliated to the same university. The medical college from which a candidate has passed out MBBS

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Date: 2021.09.21 18:07:25 IST

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examination may have been affiliated to one university, whereas such candidate eventually succeeding in securing admission to PG Medical Course in another medical college may be affiliated to a different university. The concept of institutional preference/reservation is thus not attracted in the present case.

22. In view of the peculiarity attached to the impugned Admission Rules of 2018, though it cannot be said that this gives 100% reservation to the candidate domiciled in the State of Madhya Pradesh or alongwith them, those who have passed out MBBS examination from any medical/dental college in the State of Madhya Pradesh, but as per the data collated by the respondents themselves, it is evident that in practice, both before and after the Rules of 2018 were enforced, majority seats are going to MP domicile students and therefore, the question that is required to be answered is as to what extent such preference on the basis of domicile can be given and whether the limit of 50% propounded by the Supreme Court in case of **Dr.Pradeep Jain (supra)** and in the subsequent judgments, for institutional preference, should also apply to preference given on the basis of domicile? This question directly fell for consideration of the Supreme Court in case of **Dr.Tanvi Behl (supra)** in which the Court noted the similar reservation/preference has been given in favour of domiciles by as many as 13 states, details of which have been enumerated in Para 11 of the report. The Supreme Court upon revisiting all the earlier judgments touching upon this subject extensively deliberated upon the question whether domicile/residence based reservation is entirely impermissible and observed in Para 14 to 18 & 22 to 25 of the report as under:-

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Date: 2021.09.21 18:07:25 IST

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"14. As noticed, the core question calling for determination herein is as to whether providing for domicile/residence-based reservation for admission to PG Medical Courses is constitutionally invalid and is impermissible. Several decisions of this Court have been referred by the learned counsel for the respondents in support of the impugned order of the High Court and in support of the contention that such a prescription is constitutionally invalid. In our view, the submissions on invalidity of the domicile/residence based reservation in relation to the State Quota seats and the assumption that such a proposition is long back discarded (as per the expression employed by the High Court) needs to be examined by a Larger Bench of this Court in view of the significance of the issue, which is of recurrence in every academic year for one reason or another; and particularly when varying views have been expressed by different Benches, which need to be reconciled with the observations made by the Constitution Bench of this Court *in Saurabh Chaudri's case*. We may, therefore, refer to the decision in *Saurabh Chaudri* in requisite details.

15. It could be profitably noticed that before the pronouncement in *Saurabh Chaudri* by the Constitution Bench, this Court had expressed desirability of merit-based admissions to the Medical Courses; and multiple vistas of such admission process were dealt with by this Court in several decisions like those in *Jagdish Saran, Dr. Pradeep Jain* as also in *Magan Mehrotra*. In fact, reference to the Constitution Bench in *Saurabh Chaudri case* had been in sequel to *Magan Mehrotra case* inasmuch as a three-Judge Bench of this Court in *Magan Mehrotra* had held that apart from institutional preference, no other preference including reservation on the basis of residence was envisaged in view of the decision in *Pradeep Jain*. However, the notification consequently issued by Delhi University for institutional preference for admission to PG Medical Courses was questioned by the appellants claiming themselves to be the residents of Delhi. In this challenge; a Division Bench of this Court referred the matter to a three-Judge Bench having regard to the decision in *Magan Mehrotra*; and the three-Judge Bench directed the matter to be placed before a Bench of five Judges considering its importance. In this backdrop, the Constitution Bench, dealing with the reference in *Saurabh Chaudri*, indicated the two questions being determined by it in the following:-

> "2. The core question involved in these writ petitions and appeal centres around the constitutional validity of reservation whether based on domicile or institution in the matter of admission into postgraduate courses in government-run medical colleges.

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Date: 2021.09.21 18:07:25 IST

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10. The question which was initially raised in the writ petition was as to whether reservation made by way of institutional preference is ultra vires Articles 14 and 15 of the Constitution of India; but during hearing a larger issue viz. as to whether any reservation, be it on residence or institutional preference, is constitutionally permissible, was raised at the Bar."

15.1. The first question, as to whether reservation on the basis of domicile is impermissible, was answered and disposed of by the Constitution Bench in the following passages:-

"29. The first question that arises for consideration is, *whether the reservation on the basis of domicile is impermissible in terms of clause (1) of Article 15 of the Constitution of India*. The term "place of birth" occurs in clause (1) of Article 15 but not "domicile". If a comparison is made between Article 15(1) and Article 16(2) of the Constitution of India, it would appear that whereas the former refers to "place of birth" alone, the latter refers to both "domicile" and "residence" apart from place of birth. *A distinction, therefore, has been made by the makers of the Constitution themselves to the effect that the expression "place of birth" is not synonymous to the expression "domicile" and they reflect two different concepts*. It may be true, as has been pointed out by Shri Salve and pursued by Mr Nariman, that both the expressions appeared to be synonymous to some of the members of the Constituent Assembly but the same, in our opinion, cannot be a guiding factor. In *D.P. Joshi case a Constitution Bench held so in no uncertain terms*.

30. This Bench is bound by the said decision.

31. In *State of U.P. v. Pradip Tandon* this Court observed: (SCC p. 277, para 29)

"29. The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appears to be made for the majority population of the State. Eighty per cent of the population of the State cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas. Poverty

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Date: 2021.09.21 18:07:25 IST

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> is found in all parts of India. In the instructions for reservation of seats it is provided that in the application form a candidate for reserved seats from rural areas must submit a certificate of the District Magistrate of the district to which he belonged that he was born in rural area and had a permanent home there, and is residing there or that he was born in India and his parents and guardians are still living there and earn their livelihood there. *The incident of birth in rural areas is made the basic qualification. No reservation can be made on the basis of place of birth, as this would offend Article 15*."
>
> 32. Answer to the said question must, therefore, be rendered in the negative."

15.2. Thus, the answer by Constitution Bench to the question as to whether domicile/residence-based reservation is impermissible had been in a crisp and terse negative. In other words, the answer was in the affirmative on permissibility. For comprehension of the basis of such answer by the Constitution Bench, appropriate it would be to closely look at the two decisions referred to in the aforesaid paragraphs 29 and 31 in *Saurabh Chaudri*.

15.3. In *State of U.P. v. Pradip Tandon* (referred to in the above-quoted paragraph 31 of *Saurabh Chaudri*), the question that arose for consideration before the three-Judge Bench of this Court had been as to whether the instructions framed by the State of Uttar Pradesh in making reservation in favour of the candidates from rural areas, hill areas and Uttarakhand for admission to Medical Colleges were constitutionally valid. This Court did not approve of the reservation for rural areas for the same had been made *only on the basis of the place of birth* and hence, was offending Article 15 of the Constitution. However, in the said decision, the reservation made in favour of the people in hill areas and Uttarakhand area was upheld, for the same having been made for the benefit of socially and educationally backward classes of citizens, particularly when this Court found that the State had established that the people in those areas were of socially and educationally backward classes.

15.4. As noticed, in *Saurabh Chaudri*, after a short reference to the decision in *D.P.Joshi v. State of M.B*. this Court reiterated that the concept of "domicile" was not equivalent to the concept of "place of birth"; and the prohibition contained in Article 15(1) of the Constitution of India relates to any discrimination only on the basis of the "place of birth". The said decision in *D.P. Joshi* was

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Date: 2021.09.21 18:07:25 IST

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rendered by a Constitution Bench of this Court in a writ petition under Article 32 of the Constitution of India that was filed while questioning the stipulation regarding capitation fees, as made by Mahatma Gandhi Medical College at Indore, run by the State of Madhya Bharat. The petitioner, who was a resident of Delhi and had been admitted as a student in the said Medical College at Indore, was called upon to pay a sum of Rs. 1500/- p.a. as capitation fee in addition to the tuition fee and other charges payable by the students of said college in general. The petitioner's grievance had been that such rules relating to the matter of fees, as in force in the college concerned, were of discrimination between the students who were residents of Madhya Bharat and those who were not, inasmuch as the residents of other States were required to pay such capitation fee in addition to the tuition fee and charges payable by all the students; and such a stipulation was offending Articles 14 and 15 of the Constitution of India. The Constitution Bench, by 4:1 majority, rejected such contentions while pointing out the significant distinction in the concepts of "domicile/residence" and "place of birth" and after finding nothing of discrimination in providing capitation fees on a particular class of students and not others. The rule in question was taken note of as under:

> "4. …."For all students who are 'bona fide residents' of Madhya Bharat no capitation fee should be charged. But for other non- Madhya Bharat students the capitation fee should be retained as at present at Rs. 1,300 for nominees and at Rs. 1,500 for others"…..
>
> 'Bona fide resident' for the purpose of this rule was defined as :
>
> "one who is -
>
> (a) a citizen of Indian whose original domicile is in Madhya Bharat, provided he has not acquired a domicile elsewhere, or
>
> (b) a citizen of India, whose original domicile is not in Madhya Bharat but who has acquired a domicile in Madhya Bharat and has resided there for not less than 5 years at the date, on which he applies for admission, or
>
> (c) a person who migrated from Pakistan before 30-9-1948 and intends to reside in Madhya Bharat permanently, or
>
> (d) a person or class of persons or citizens of an area or territory adjacent to Madhya Bharat or to India in respect of whom or which a Declaration of

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Date: 2021.09.21 18:07:25 IST

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> Eligibility has been made by the Madhya Bharat Government".

15.4.1. After extracting Article 15(1) of the Constitution of India 12, the Constitution Bench expounded on the difference in the concepts of "domicile/residence" and "place of birth" in the following:-

> "5….Residence and place of birth are two distinct conceptions with different connotations both in law and in fact, and when Article 15(1) prohibits discrimination based on the place of birth, it cannot be read as prohibiting discrimination based on residence."

The Court again said:

> "6… whether the expression used is "domicile of origin" or "domicile of birth", the concept involved in it is something different from what the words "place of birth" signify. *And if "domicile of birth" and "place of birth" cannot be taken as synonymous, then the prohibition enacted in Article 15(1) against discrimination based on place of birth cannot apply to a discrimination based on domicile*."
>
> (emphasis supplied)

15.4.2. The Court further rejected the contention that there could not be a domicile of Madhya Bharat and also found force in the contention that the expression "domicile" in the clauses concerned was essentially referable to "residence". The Court said:

> "10. Under the Constitution, the power to legislate on succession, marriage and minority has been conferred under Entry 5 in the Concurrent List on both the Union and the State Legislatures, and it is therefore quite conceivable that until the Center intervenes and enacts a uniform code for the whole of India, each state might have its own laws on those subjects, and thus there could be different domiciles for different States. We do not, therefore, see any force in the contention that there cannot be a domicile of Madhya Bharat under the Constitution.
>
> 11. It was also urged on behalf of the respondent that the word "domicile" in the rule might be construed not in its technical legal sense, but in a popular sense as meaning "residence", and the following passage in Wharton's Law Lexicon, 14th Edition, page 344 was quoted supporting such a construction :
>
> "By the term 'domicile', in its ordinary

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Date: 2021.09.21 18:07:25 IST

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> acceptation, is meant the place where a person lives or has his home. In this sense the place where a person has his actual residence, inhabitancy, or commorancy, is sometimes called his domicile".

In *Susan McMullen v. Wadsworth*: [1889] 14 A.C. 631, it was observed by the Judicial Committee that-

> "the word domicile in Article 63 (of the Civil Code of Lower Canada) was used in the sense of residence, and did not refer to international domicile".

What has to be considered is whether in the present context "domicile" was used in the sense of residence. The rule requiring the payment of a capitation fee and providing for exemption there from refers only to bona fide residents within the State. There is no reference to domicile in the rule itself, but in the Explanation which follows, clauses (a) and (b) refer to domicile, and they occur as part of the definition of "bona fide resident". In *Corpus Juris Secundum*, Volume 28, page 5, it is stated :

> "The term 'bona fide residence' means the residence with domiciliary intent".

There is therefore considerable force in the contention of the respondent that when the rule-making authorities referred to domicile in clauses (a) and (b) they were thinking really of residence. In this view also, the contention that the rule is repugnant to Article 15(1) must fail."

15.4.3. The Court also rejected the contention that the Rule imposing capitation fee was in contravention of Article 14 in the following:

> "14. It is next contended for the petitioner that the imposition of capitation fee on some of the students and not on others is discriminatory, and is in contravention of Article 14 of the Constitution, and therefore void. The impugned rule divides, as already stated, self-nominees into two groups, those who are bona fide residents of Madhya Bharat and those who are not, and while it imposes a capitation fee on the latter, it exempts the former from the payment thereof. It thus proceeds on a classification based on residence within the State, and the only point for decision is whether the ground of classification has a fair and substantial relation to the purpose of the law, or whether it is purely arbitrary and fanciful.

Signature Not Verified
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Date: 2021.09.21 18:07:25 IST

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> 15. The object of the classification underlying the impugned rule was clearly to help to some extent students who are residents of Madhya Bharat in the prosecution of their studies, and it cannot be disputed that it is quite a legitimate and laudable objective for a State to encourage education within its borders. Education is a State subject, and one of the directive principles declared in Part IV of the Constitution is that the State should make effective provisions for education within the limits of its economy. (Vide Article 41). The State has to contribute for the upkeep and the running of its educational institutions. We are in this petition concerned with a Medical College, and it is well-known that it requires considerable finance to maintain such an institution. If the State has to spend money on it, is it unreasonable that it should so order the educational system that the advantage of it would to some extent at least enure for the benefit of the State? A concession given to the residents of the State in the matter of fees is obviously calculated to serve that end, as presumably some of them might, after passing out of the College, settle down as doctors and serve the needs of the locality. The classification is thus based on a ground which has a reasonable relation to the subject-matter of the legislation, and is in consequence not open to attack. It has been held in *The State of Punjab v. Ajaib Singh and another*: 1953 S.C.R. 254 that a classification might validly be made on a geographical basis. Such a classification would be eminently just and reasonable, where it relates to education which is the concern primarily of the State. The contention, therefore, that the rule imposing capitation fee is in contravention of Article 14 must be rejected."

16. From the aforesaid, it is but clear that in *Saurabh Chaudri*, the Constitution Bench found that the other Constitution Bench in *D.P. Joshi* had rejected the contention that no provision could be made on the basis of domicile/residence in relation to students taken in the medical colleges. In other words, in *Saurabh Chaudri*, this Court relied upon the decision in *D.P. Joshi* while holding that domicile/residence-based reservation was not impermissible. Standing this exposition by the Constitution Bench of this Court, it is difficult to conclude that domicile/residence-based reservation/preference is a concept totally overthrown and jettisoned.

17. In the impugned order, it was noticed by the High Court that the aforementioned paragraphs 29 to 32 in *Saurabh Chaudri* were sought to be relied upon by the contesting respondents (some of them being the

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Date: 2021.09.21 18:07:25 IST

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appellants herein) to contend that preference on the basis of domicile is permissible and does not offend the constitutional scheme of things. However, after noticing such contention, the High Court switched over to the proposition of institutional preference and extensively reproduced the passages from its decision in *Chahat Bhatia vs. Govt. Medical College and Hospital, 2018 SCC Online P & H 6596*. The High Court thereafter referred to the stipulations in the questioned Clause 2-B of the prospectus and found basic flaws and shortcomings in the same. Having said so, the High Court proceeded to observe that even if such a reservation (i.e., domicile/residence- based reservation) was possible, it would have no hesitation in saying that the questioned Clause in the prospectus was unsustainable. Thereafter, the High Court observed that this Court in *Saurabh Chaudri* and *Pradeep Jain* has clearly laid down that preference on the basis of residence is to be deprecated in the matters of admission in PG Medical Courses; and reproduced paragraph 46 as also paragraph 1 in *Saurabh Chaudri* while observing that the conclusion in *Saurabh Chaudri* was the same as the one accorded in *Pradeep Jain*. In the process of such discussion and reasoning, the High Court has not even touched the contention that in view of the aforesaid answer by the Constitution Bench, preference on the basis of domicile was not entirely impermissible; and seems to have clearly missed out the import of the other answer by the Constitution Bench in *Saurabh Chaudri*, as occurring in the above-quoted paragraphs 29 to 32.

18. It appears that for the Constitution Bench in *Saurabh Chaudri* having largely approved the observation in *Dr. Pradeep Jain's case* in relation to the question of institutional preference, the High Court has assumed that all the observations in *Dr. Pradeep Jain* stood ipso facto approved. True it is that in *Dr. Pradeep Jain*, a three-Judge Bench of this Court stated its total disapproval of domicile/residence-based reservation in PG Medical Courses but such observations in *Pradeep Jain*, when read with reference to aforesaid paras 29 to 32 of the decision in *Saurabh Chaudri*, the inevitable result is that domicile/residence-based reservation has not been taken as an anathema altogether to these admission process.

*** **** *** ***

22. On the other side of spectrum, we may also observe that the generalised and blanket prohibition on domicile/residence-based reservation may not be work-able in relation to the State Quota seats of PG Medical Courses. As noticed, the fundamental fact remains that all the admissions to the Medical Courses, be it All India Quota or be it the State Quota, are made on the basis of

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Date: 2021.09.21 18:07:25 IST

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ranks obtained in NEET and not otherwise. 50% of the seats are assigned to the States/Union Territories as being the State Quota seats. As noticed, different States and Union Territories have made different provisions for filling up these State Quota seats. The institutional preference, that has also been held permissible in the decisions of this Court, obviously comes into play in relation to such State Quota seats. However, even when institutional preference carries a major or prominent role in relation to such State Quota seats, varying provisions have also been made by different States/UTs with reference to domicile/residence, seemingly for the purpose of ensuring that the candidates belonging to a particular State/UT would be available for rendering service in that State/UT after post-graduation.

22.1. The peculiar feature in relation to the State Quota seats is that if some provision as regards domicile/residence-based reservation is not made, the only other method of filling up these State Quota seats would be by way of institutional preference. This would effectively result in entire of the State Quota seats going to institutional preference alone. Now, if the entire State Quota seats are provided for institutional preference alone, the consequence would be that only the candidates of the medical institutions in the State/UT would be filling up the State Quota seats; and such a consequence may not be permissible at all.

22.2. Moreover, the unique situation in relation to UT Chandigarh is that it has only one Medical College. Thus, the dispensation in question, as provided by UT Chandigarh and its Medical College and as construed by High Court, if given effect to, would inevitably result in cornering all the State Quota PG seats by the students of that solitary Medical College alone. In the alternative, if only 50% of State Quota seats are to be given to that Medical College, the remaining 50% of State Quota seats would again fall in the pool of All India Quota because there is no other mode of filling up these seats. We find it difficult if either of such consequences could be countenanced.

22.3. It is also noteworthy that even as per the instructions issued by the examining body, the State Quota seats could be filled up by the States, inter alia, with reference to the domicile. In the given scenario, it is again difficult to accept that domicile/residence-based reservation, as provided for filling up of the State Quota open seats, be held invalid altogether.

23. Before summing up and making reference, we may observe in the passing that in regard to the case at hand, the High Court has indicated several reasons for its disapproval of the stipulations made in impugned Clause 2B of the prospectus in question. Prima facie, it appears that

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Date: 2021.09.21 18:07:25 IST

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even if domicile/residence-based reservation in admission to PG Medical Courses is held permissible, the mode and modalities for its application would still require further examination because it remains questionable if such reservation could be applied by way of such stipulations, as made in the impugned Clause 2B of the prospectus in question. Having said so and for the order proposed to be passed in these matters, we do not find it necessary to enter into microscopic analysis of the sub-clauses pertaining to domicile/residence-based reservation as occurring in the impugned Clause 2B of the prospectus in question and would leave such questions open to be determined on the basis of answers to the root questions by the larger Bench.

Summation and Reference

24. For what has been discussed hereinabove, in our view, the question as to whether providing for domicile/residence-based reservation, particularly in admission to PG Medical Courses, is constitutionally permissible as also its corollaries, including the mode and modalities of its implementation (if permissible), more particularly in relation to the State/UT having only one Medical College, need to be examined by a larger Bench of this Court for authoritative pronouncement.

25. Accordingly we would propose the following questions to be examined by a Larger Bench of this Court :

25.1. As to whether providing for domicile/residence-based reservation in admission to “PG Medical Courses” within the State Quota is constitutionally invalid and is impermissible?

25.2. (a) If answer to the first question is in the negative and if domicile/residence-based reservation in admission to “PG Medical Courses” is permissible, what should be the extent and manner of providing such domicile/residence-based reservation for admission to “PG Medical Courses” within the State Quota seats?

25.2. (b) Again, if domicile/residence-based reservation in admission to “PG Medical Courses” is permissible, considering that all the admissions are to be based on the merit and rank obtained in NEET, what should be the modality of providing such domicile/residence-based reservation in relation to the State/UT having only one Medical College?

25.3. If answer to the first question is in the affirmative and if domicile/residence-based reservation in admission to “PG Medical Courses” is impermissible, as to how the State Quota seats, other than the permissible institutional preference seats, are to be filled up?”

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23. In view of the aforementioned conclusions arrived by the Supreme Court upon consideration of all the leading judgments on the subject including Constitution Bench Judgments in **Saurabh Chaudri (supra) and D.P. Joshi (Supra)** and three-judge bench judgment in **Pradip Tandan (supra),** the Supreme Court has referred to the Larger Bench the question whether providing for domicile/residence-based reservation, in admission to PG Medical Courses within the state quota is constitutionally invalid or impermissible and if permissible, what should be the extent and manner of providing such domicile/residence-based reservation within the state quota seats and what should be the modalities for providing such domicile/residence-based reservation in the State? If the answer to the first question is that the domicile/residence-based reservation is impermissible, as to how the State quota seats, other than the permissible institutional preference seats, are to be filled?

24. Contention that the decision in **Dr.Tanvi Behl (supra)** does not apply for admission to the PG Medical study courses in private medical colleges as it only deals with the State quota seats in government medical colleges cannot be countenanced for the simple reason that neither the MCI Postgraduate Regulations, 2000 nor the Admission Rules of 2018 make any distinction between the seats of the State quota in government medical colleges and the seats in the private medical colleges. No doubt, unlike the government medical colleges, private medical colleges are not required to part with 50% of the seats in favour of all India quota, but that by itself does not give any authority to private medical colleges to fill up those seats on their own. All the seats even in private medical colleges are

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Date: 2021.09.21 18:07:25 IST

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required to be filled up as per the common counseling with reference to Clause 9A(3) of the MCI Regulations, 2000 in the same manner in which 50% seats of the State quota in the government colleges are filled, on the basis of common counseling under the overall superintendence, direction and control of the State Government.

25. Decision of the question whether in view of Section 8 of the Act of 2007, the State Government is empowered to only provide reservation in favour of SC/ST/OBC and further whether the State can identify the source of admission from amongst candidates domiciled in the State of Madhya Pradesh, as a separate class, has to await the answer of reference by the Larger Bench in **Dr.Tanvi Behl (supra)**, in which the Supreme Court after considering the Constitution Bench judgments in **Saurabh Chaudari (supra)** and **D.P. Joshi (Supra)** and three-judge bench judgment in **Pradip Tandon (supra)** held that "domicile/residence-based reservation is not impermissible" and that "domicile/residence-based reservation has not been taken as an anathema altogether to these admission processes." The Supreme Court has therein distinguished the judgment in **Nikhil Himthani (supra)**, **Vishal Goyal (supra)** and **Kriti Lakhina (supra)** relied upon by the learned counsel for the petitioners and held that "it is difficult to cull out that domiciles/residence-based reservation is altogether disapproved." It was however held that "the manner of providing such reservation would always remain subject to requirement of rationality and reasonableness." Considering the fact that similar preference on the basis of domicile for admission to PG medical study courses has been given in several other States and in State of

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Madhya Pradesh also, it has been given quite for some time, propriety demands that the question as to what extent preference on the basis of residence/domicile can be given, having already been referred to the Larger Bench of Supreme Court in **Dr.Tanvi Behl (supra)**, need not be dilated further in the present proceedings, to await the authoritative pronouncement of the Supreme Court when it answers the reference, particularly when the process of admission in the current academic year has already come to an advance stage. In view of reference on the question of law involved in the present matter having already been referred to the Larger Bench of the Supreme Court in **Dr. Tanvi Behl (supra)**, this Court does not for the time being deem it appropriate to interfere with the impugned provision. It however goes without saying that the decision of the Supreme Court in **Dr. Tanvi Behl (supra)** on the questions referred to the Larger Bench shall in any case bind the parties herein.

26. In the light of the view that we have taken of the matter, the present **writ petition is disposed of**.

(MOHAMMAD RAFIQ)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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