Tanvi Behl vs Shrey Goel on 29 January, 2025

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Bench: Sudhanshu Dhulia, Hrishikesh Roy

2025 INSC 125 REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL JURISDICTION
CIVIL APPEAL NO. 9289 OF 2019

DR. TANVI BEHL APPELLANT(S)

VERSUS

SHREY GOEL & ORS. RESPONDENT(S)

WITH

CIVIL APPEAL NO.9290 OF 2019

CIVIL APPEAL NO.9291 OF 2019

AND

WRIT PETITION (C) NO.1183/2020

JUDGMENT

SUDHANSHU DHULIA, J.

1. The question before this Court is whether residence-based reservation in Post Graduate (PG) Medical Courses by a State is constitutionally valid? On this the precise questions formulated by the Division Bench of this Court, which have now come up for determination before this Court, are as follows:

> "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?

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?

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?

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?

2. Before we come to answer these questions, we must state the facts first in order to get a perspective of the case before us. The case is from the Union Territory of Chandigarh which has just one Medical College called 'The Government Medical College and Hospital, Chandigarh' (hereinafter referred to as the 'Medical College'). On 28.03.2019, the process of admissions to PG Medical Course in the said Medical College had started. The Medical College had 64 PG Medical seats in its State Quota and the relevant clause of the prospectus, which was challenged before the High Court of Punjab and Haryana, distributed these seats as follows:

"2. State Quota: 64 seats. In compliance of the decision of Hon'ble Punjab and Haryana High Court, distribution of 50% State Quota seats are as below:

Category	Total no. of seats	Reserved General (SC) 15%
Preference Pool (IP)		
Pool		

A. Institutional Preference Pool (IP): Candidates who have passed their MBBS examination from Govt. Medical College & Hospital Chandigarh B. UT Chandigarh Pool: Candidate who fulfil eligibility criteria as below: This category will include candidates with background of Chandigarh. To be eligible for this category candidate should fulfil any of the following criteria: i. Studied for a period of 5 years in the Union Territory of Chandigarh at any time prior to the last date of the submission of

the application. ii. Candidates whose parents have resided in Union Territory of Chandigarh for a period of at least 5 years at any time prior to the last date of the submission of the application either in pursuit of a profession or holding a job. iii. Children of persons who have held/hold immovable property in Union Territory of Chandigarh for a period of five years at any time prior to the last date of the submission of 11 the application. The property should be in the name of the parents or the candidate himself/herself.

Important Note:

a) To be eligible for UT Chandigarh Pool under B(i), the candidate must submit a certificate to the effect from Principal of School/College located within the territory of UT Chandigarh

b) To be eligible under B (ii), the candidate should submit a certificate issued by the D.C of UT Chandigarh to the effect that the candidate or his parents have been residing/have resided in Chandigarh at least for 5 years

c) To be eligible under B (iii), the candidate must submit a certificate issued by D.C-cum-Estate Officer/Tehsildar stating that the candidate/parents of the candidate have held/are holding immovable property in UT Chandigarh for at least for 5 years prior to the submission of application." As it is clear, for the 64 seats falling under the State quota all are reserved either for the 'residents' of Chandigarh or for those who have done their MBBS from the same Medical College in Chandigarh.

3. Petitions were filed before the Punjab and Haryana High Court challenging the above provision as it gave reservation on the basis of residence, which resulted in all 64 seats being filled either by the residents of Chandigarh or by students who had done their MBBS from the same Medical College under institutional preference. The petitioners therein had argued that the above provision was in direct conflict with various decisions of the Supreme Court including Jagadish Saran v. Union of India (1980) 2 SCC 768, Dr. Pradeep Jain v. Union of India (1984) 3 SCC 654 and Saurabh Chaudri v. Union of India (2003) 11 SCC 146. The High Court in its well-considered decision, after taking note of the long line of decisions of this Court, but primarily the three above-cited decisions, came to the conclusion that the reservation made for the PG Medical Course in the Medical College was on the basis of a long- discarded principle of domicile or residence, was bad, and had allowed the petitions cancelling the admission of such students.

4. The eligibilities stated in the prospectus for being a 'resident' of Chandigarh are very wide and have no rationale to the objects sought to be achieved. These even include a person who studied in Chandigarh at any time for 5 years or the children of parents who had property in Chandigarh for a period of 5 years at any point of time! Be that as it may, the High Court held that there has been a violation of Article 14 of the Constitution of India in granting such reservations. Consequently, the clause 2B (i), (ii) and (iii) were declared invalid and unconstitutional and all admissions which were made by placing reliance on the above provision were held to be bad. It was directed that the

Medical College should now fill these seats according to the merit position of candidates which they have obtained in their NEET Examination.

The decision of the High Court was challenged before this Court and the following interim order was passed by this Court on 09.05.2019:

> "Permission to file special leave petitions is granted. Application for exemption from filing certified copy of the impugned order is allowed.
>
> Permission to file additional documents is granted. Issue notice, returnable on 2nd July, 2019. Dasti, in addition, is permitted.
>
> Counsel appearing for Medical Council of India waives notice.
>
> Liberty to the petitioner(s) to implead the students already admitted to the post-graduate course for the academic session 2019-2020.
>
> There shall be ad-interim stay of the impugned order till the next date of hearing.
>
> It is, however, made clear that the admission process already done on the basis of the stated provisions governing domicile reservation will be subject to the outcome of these petitions."

5. Now, the Division Bench after framing of questions stated above, referred the matter to this larger Bench. Let us straight away answer the questions first: So far as question no. 1, which is whether providing for domicile/residence-based reservation in admission to "PG Medical Courses" within the State quota is constitutionally invalid and impermissible is concerned, our answer is in the affirmative. Yes, it is constitutionally invalid. In other words, providing for domicile or residence-based reservation in PG Medical Courses is constitutionally impermissible and cannot be done. Now, since our answer to the first question is in the affirmative, we need not answer the next two questions i.e., 2(a) and 2(b). We will answer the third question towards the end of this judgment.

6. There are three judgments of this Court which have a significant bearing on the question before us. The three judgments, in the order of the year when they were delivered, are as follows:

> (a) Jagadish Saran v. Union of India, (1980) 2 SCC 768
>
> (b) Dr. Pradeep Jain v. Union of India, (1984) 3 SCC 654
>
> (c) Saurabh Chaudri v. Union of India, (2003) 11 SCC 146 Whereas Jagadish Saran and Pradeep Jain are three judge Bench decisions, Saurabh Chaudri is a Constitution Bench judgment of five judges.

7. In Jagadish Saran, essentially the question before this Court was whether institution-based reservation in PG Medical Courses is constitutionally valid and permissible. The answer which was given by the Court was that it is permissible to a reasonable extent as it only creates reasonable classification which has a nexus with the object sought to be achieved and hence it is not violative of Article 14 of the Constitution of India. Although the question in Jagadish Saran was not directly related to residence-based or domicile-based reservation, yet while answering the main question Justice Krishna Iyer in his inimitable manner did touch upon various other aspects, including residence and its importance, and most of all the importance of having merit-based reservation in Post Graduate Medical studies.

8. In Pradeep Jain, the question before this Court was directly relating to residence-based reservation in PG Medical courses and whether that is permissible in law, and the answer given by this Court was that though institution-based reservation is permissible, as held in Jagadish Saran, but reservation made in PG Medical seats on the basis of residence is impermissible and would be violative of Article 14 of the Constitution of India. This line of reasoning and ultimately, the law laid down in Pradeep Jain was followed by the Constitution Bench of Saurabh Chaudri.

9. Now, once the Five Judge Constitution Bench (Saurabh Chaudri), has answered the question in affirmative, which is that residence- based or domicile-based reservation in PG Medical courses is impermissible and constitutionally invalid, we did wonder initially why these questions were framed at all in this case and referred to us. One possible reason why this was done perhaps was that Saurabh Chaudri has to be deciphered as it was dealing with complex issues and while relying heavily on Pradeep Jain, which in turn, relies on Jagadish Saran, it becomes difficult to demarcate where Saurabh Chaudri ends and Pradeep Jain or Jagadish Saran begins. But then a closer look at Saurabh Chaudri, leaves one with no doubt that it has followed Pradeep Jain entirely and therefore what has been held in Saurabh Chaudri is the same what was earlier held in Pradeep Jain, which is that residence-based reservation is not permissible in PG Medical Courses.

10. We first have to see the question before the Court in Saurabh Chaudri and who were the petitioners before the Court? In Saurabh Chaudri, the petitioners (52 in number), were residents of Delhi, who had joined various medical colleges outside Delhi for their MBBS under an All- India quota, and after completing their MBBS from outside now wanted to join medical colleges in Delhi for their PG Medical Course. Their claim for admission was based on the fact that they are 'residents of Delhi' and therefore they should be granted admission under the residential quota which was otherwise reserved only for students who had done their MBBS from Delhi. This Court, however, declined to grant them relief and their petition was dismissed for the reason that residence-based reservation is impermissible. The Court while dismissing their claim in Saurabh Chaudri followed the reasoning given in a recently decided case of Supreme Court in Magan Mehrotra & Ors. v. Union of India & Ors. (2003) 11 SCC 186, which had relied totally on Pradeep Jain and held that apart from institutional preferences, no other preferences including reservation on the basis of residence is envisaged in the Constitution.

11. Interestingly the appellants before this Court too rely on Saurabh Chaudri and would argue that in Saurabh Chaudri this Court had held that residence-based reservation is not barred under Article

15 of the Constitution. It is true that Saurabh Chaudri does say that, which is indeed the correct position in law. But this would not be a complete reading of Saurabh Chaudri!

12. The question in Saurabh Chaudri was the validity of institutional preference/reservation as well as reservation based on residence. The precise questions before the Court, in its own words are as follows: (SCC p. 155, para 10) "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." It answered in the affirmative for institutional preference and held that to be a reasonable classification permissible under Article 14 of the Constitution of India.

13. While doing so Saurabh Chaudri relies heavily on both Pradeep Jain and Jagadish Saran. Passages after passages have been quoted from both Jagadish Saran and Pradeep Jain with approval. At this stage we must also remember that to a reasonable degree residence-based reservation in a State is permissible for MBBS Courses (Pradeep Jain), but the same reservation for PG Courses is not permissible by a long line of decisions of this Court, including Pradeep Jain.

14. The difference in the logic in making reservations on the basis of residence in UG level or MBBS level, and PG level (i.e. MD or MS) was explained in Jagadish Saran as well as Pradeep Jain. It was held that at PG level merit cannot be compromised, although residence- based reservation can be permissible to a certain degree in UG or MBBS course. While coming down heavily on residence-based reservation in PG medical courses, it referred to the opinion of the Medical Education Review Committee [relied upon in Saurabh Chaudri (SCC p. 168, para 48)], which are as follows :-

> (SCC p. 690, para 22) "22. ...'all admissions to the postgraduate courses in any institution should be open to candidates on an all-India basis and there should be no restriction regarding domicile in the State/Union Territory in which the institution is located'."

15. Why residence-based reservation is impermissible is for the reason that such reservation runs counter to the idea of citizenship and equality under the Constitution. It was said as under in Pradeep Jain :- (SCC p. 672, para 10) "10. ... Now, the primary imperative of Article 14 is equal opportunity for all across the nation for education and advancement and, as pointed out by Krishna Iyer, J. in Jagadish Saran (Dr) v. Union of India [(1980) 2 SCC 768 : AIR 1980 SC 820] 'this has burning relevance to our times when the country is gradually being "broken up into fragments by narrow domestic walls" by surrender to narrow parochial loyalties'. What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality. Anyone anywhere, humble or high, agrestic or urban, man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, speciality or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases, would be the result of his birth in a place situate within that State, should

have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. It is axiomatic that talent is not the monopoly of the residents of any particular State; it is more or less evenly distributed and given proper opportunity and environment, everyone has a prospect of rising to the peak. What is necessary is equality of opportunity and that cannot be made dependent upon where a citizen resides." The above passage from Pradeep Jain was relied upon in Saurabh Chaudri (SCC p. 166, para 46), while coming to the same conclusion.

16. There is no doubt that Saurabh Chaudri though holds institutional preference or reservations to a reasonable extent permissible under the Constitution in PG courses, yet holds reservation in PG Medical Courses and other higher learning courses, on the basis of 'residence' in the State as violative of Article 14 of the Constitution of India.

17. Article 14 of the Constitution of India speaks of Right to equality and declares that "the State shall not deny to any person equality before the law or the equal protection of law within the territory of India". Other Articles such as Article 15, 16, 17 and 18 are only different facets of Right to equality.

18. Article 15 as it existed in the original Constitution declares that the State shall not discriminate on the grounds of religion, race, caste, sex or place of birth, though clause 3 is in the nature of a proviso leaving it open for the State to make any special provision for women and children. Later, clauses 4, 5 and 6 were added by way of amendments to Article 15, creating similar enabling provisions for other classes of citizens such as socially and educationally backward classes, Scheduled Castes, Scheduled Tribes and Economically Weaker Section of citizens in educational institutions. We are primarily concerned here with Articles 14 and 15 of the Constitution of India and we have to determine whether these provisions prohibit residence-based reservations in PG Medical courses. But before we do that, we must settle one question, which is the concept of 'domicile', and domicile being equated to residence or permanent residence, by the State machinery or by educational institutions in a loose/casual manner. These concepts needs to be clarified.

19. Domicile in normal parlance denotes 'the place of living' or permanent residence. The legal concept is, however, different. Domicile as stated in Halsbury's Laws of England1 is "the legal system which invokes that system as his personal law". The purpose for which domicile is used by Governments is like a substitute for 'permanent residence' or a 'permanent home'. Yet 'domicile' is primarily a legal concept for the purposes of determining what is the 'personal law' applicable to an individual. Therefore, even if an individual has no permanent residence or permanent home, he is still invested with a 'domicile' albeit by law or implication of law. Consequently, the concept of domicile acquires importance only when within a country there are different laws or more precisely different systems of law operating. But this is not the case in India. Each citizen of this country carries with him or her, one single domicile which is the 'Domicile of India'. The concept of regional or provincial domicile is alien to the Indian legal system. The seminal decision on this subject is Pradeep Jain. The aspect of domicile is fully explained and elaborated, and needs to be referred to here. Firstly, paragraph 8 of the said judgment would be relevant, which reads as follows: (SCC p.668 para 8) "8. Now it is clear on a reading of the Constitution that it recognises only one

domicile, namely, domicile in India. Article 5 of the Constitution is clear and explicit on this point and it refers only HALSBURY'S LAWS OF ENGLAND (4th ed.), Vol-8, para 421. to one domicile, namely, "domicile in the territory of India." Moreover, it must be remembered that India is not a federal State in the traditional sense of that term. It is not a compact of sovereign States which have come together to form a federation by ceding a part of their sovereignty to the federal State. It has undoubtedly certain federal features but it is still not a federal State and it has only one citizenship, namely, the citizenship of India. It has also one single unified legal system which extends througout the country. It is not possible to say that a distinct and separate system of law prevails in each State forming part of the Union of India. The legal system which prevails throughout the territory of India is one single indivisible system with a single unified justicing system having the Supreme Court of India at the apex of the hierarchy, which lays down the law for the entire country. It is true that with respect to subjects set out in List II of the Seventh Schedule to the Constitution, the States have the power to make laws and subject to the overriding power of Parliament, the State can also make laws with respect to subjects enumerated in List III of the Seventh Schedule to the Constitution, but the legal system under the rubric of which such laws are made by the States is a single legal system which may truly be described as the Indian legal system. It would be absurd to suggest that the legal system varies from State to State or that the legal system of a State is different from the legal system of the Union of India, merely because with respect to the subjects within their legislative competence, the State have power to make laws. The concept of 'domicile' has no relevance to the applicability of municipal laws, whether made by the Union of India or by the States. It would not, therefore, in our opinion be right to say that a citizen of India is domiciled in one State or another forming part of the Union of India. The domicile which he has is only one domicile, namely, domicile in the territory of India. When a person who is permanently resident in one State goes to another State with intention to reside there permanently or indefinitely, his domicile does not undergo any change : he does not acquire a new domicile of choice. His domicile remains the same, namely, Indian domicile. We think it highly detrimental to the concept of unity or integrity of India to think in terms of State domicile..."

20. This Court also took note of the common misconception with the State Governments on domicile and had observed that it is not uncommon for the State Governments to use the term 'domicile' when what they actually intend to mean is 'permanent residence', or even 'residence'.

21. In Pradeep Jain, the argument that domiciliary requirement for admission to medical colleges and other colleges situated within the State territory is used not in its legal sense but in a popular sense denoting residence or an intention to reside permanently, was also discussed, and this practice of wrongly using the nomenclature 'domicile' was condemned. This is what was said: (SCC p.669 para

8) "8...We think it is dangerous to use a legal concept for conveying a sense different from that which is ordinarily associated with it as a result of legal usage over the years. When we use a word which has come to represent a concept or idea for conveying a different concept or idea, it is easy for the mind to slide into an assumption that the verbal identity is accompanied in all its sequences by identity or meaning. The concept of domicile if used for a purpose other than its legitimate purpose may give rise to lethal radiations which may in the long run tend to break up the unity and integrity

of the country. We would, therefore, strongly urge upon the State Governments to exercise this wrong use of the expression 'domicile' from the rules regulating admissions to their educational institutions and particularly medical colleges and to desist from introducing and maintaining domiciliary requirement as a condition of eligibility for such admissions." The judgment at another place speaks as under: (SCC pp.664-665 para 3, 4) "3... Now if India is one nation and there is only one citizenship, namely, citizenship of India, and every citizen has a right to move freely throughout the territory of India and to reside and settle in any part of India, irrespective of the place where he is born or the language which he speaks or the religion which he professes and he is guaranteed freedom of trade, commerce and intercourse throughout the territory of India and equal protection of the law with other citizens in every part of the territory of India, it is difficult to see how a citizen having his permanent home in Tamilnadu or speaking Tamil language can be regarded as an outsider in Uttar Pradesh or a citizen having his permanent home in Maharashtra or speaking Marathi language be regarded as an outsider in Karnataka. He must be held entitled to the same rights as a citizen having his permanent home in Uttar Pradesh or Karnataka as the case may be. To regard him as an outsider would be to deny him his constitutional rights and to derecognize the essential unity and integrity of the country by treating it as if it were a mere conglomeration of independent states.

4. But, unfortunately, we find that in the last few years, owing to the emergence of narrow parochial loyalties fostered by interested parties with a view to gaining advantage for themselves, a serious threat has developed to the unity and integrity of the nation and the very concept of India as a nation is in peril. The treat is obtrusive at some places while at others it is still silent and is masquerading under the guise of apparently innocuous and rather attractive clap-trap. The reason is that when the Constitution came into operation, we took the spirit of nationhood for granted and paid little attention to nourish it, unmindful of the fact that it was a hardwon concept. We allowed 'sons of the soil' demands to develop claiming special treatment on the basis of residence in the concerned State, because recognizing and conceding such demands had a populist appeal. The result is that 'sons of the soil' claims, though not altogether illegitimate if confined within reasonable bounds, are breaking as under the unity and integrityof the nation by fostering and strengthening narrow parochial loyalties based on language and residence within a State. Today unfortunately, a citizen who has his permanent residence in a State entertains the feeling that he must have a preferential claim to be appointed to an office or post in the State or to be admitted to an educational institution within the State vis-à-vis a citizen who has his permanent residence in another State, because the latter is an outsider and must yield place to a citizen who is a permanent resident of the State, irrespective of merit. This, in our opinion, is a dangerous feeling which, if allowed to grow, indiscriminately, might one day break up the country into fragments..."

22. Much before Pradeep Jain, a full bench of the Bombay High Court had an occasion to examine the concept of domicile. In this judgment, delivered by Chief Justice M.C. Chagla in The State v. Narayandas Mangilal Dayame reported in AIR 1958 Bombay 68 (FB), the Full Bench stated as under:

> "7. Now in our opinion, it is a total misapprehension of the position in law in our country to talk of a person being domiciled in a province or in a State. A person can

> only be domiciled in India as a whole. That is the only country that can be considered in the context of the expression "domicile" and the only system of law by which a person is governed in India is the system of law which prevails in the whole country and not any system of law which prevails in any province or State. It is hardly necessary to emphasize that unlike the United States of America, India has a single citizenship. It has a single system of Courts of law and a single judiciary and we do not have in India the problem of duality that often arises in the American Law, the problem which arises because of a federal citizenship and a State citizenship. Therefore, in India we have one citizenship, the citizenship of India. We have one domicile—the domicile in India and we have one legal system - the system that prevails in the whole country. The most that one can say about a person in a State is that he is permanently resident in a particular State. But as Halsbury points out, to which we have just made reference, the mere fact that a man's home maybe fixed at a particular spot within the country does not make him domiciled in that spot but makes him domiciled in the whole country, and therefore, whether a man permanently resides in Bombay or Madras or Bengal or anywhere does not make him domiciled in Bombay, Madreas or Bengal but makes him domiciled in India; Bombay, Madras and Bengal being particular spots in India as a country."

23. In the same judgment it was also explained that merely because a State legislature makes laws on certain subject matters, it will not ipso facto mean that persons residing in that State have a provincial domicile:

> "8...The competence of the Legislature is not limited to passing of laws which would only apply to persons domiciled within the State. Any law passed by a State Legislature can be applied to any person within the State, and therefore the expression 'domicile' has no relevancy whatever in constructing the competency of the State Legislature. If the State Legislature is legislating on a topic within its competence, that law can be made applicable to anyone in the State of Bombay whether he is a resident or not or even if he is a foreigner passing through the State of Bombay. Therefore, it is fallacious to suggest that the doctrine of domicile is introduced in our law by person of the fact that the State or the Provincial Legislature has been given the power to legislate with regard to certain subject-matters within its territorial ambit. It, therefore, seems to us that the expression 'domicile' used in any State or Provincial law is a misnomer and it does not carry with the implications which that expression has when used in the context of international law..."

24. In short, the very concept of a provincial or state domicile in India is a misconception. There is only one domicile in India, which we refer to as domicile in the territory of India as given under Article 52.

All Indians have only one domicile, which is the Domicile of India.

25. Permanent residence or residence have a meaning which is different from that of 'domicile'. Article 15 speaks of 'place of birth', whereas Article 16 states that no citizen shall be discriminated, inter alia, on the ground of 'residence'. State cannot grant reservation in public employment on the basis of residence in that State. The exception carved out under Clause 3 of Article 16, enables only the Parliament to make a law prescribing a requirement of residence for State employment. And there is a reason behind it.

26. During the Constituent Assembly debates a question arose whether residence in a State should be a criterion for appointment in government service of that State. The overwhelming opinion was that it should not. Since there is one citizenship, a citizen should have a right to reside anywhere in the country and similarly seek a job anywhere in the country, this was the dominant feeling. For those who had doubts on this, Dr. Ambedkar had a solution, which he explained as follows:

> 2 Citizenship at the commencement of the Constitution: At the commencement of this Constitution, every person who has his domicile in the territory of India and—
>
> (a) who was born in the territory of India; or
>
> (b) either of whose parents was born in the territory of India; or
>
> (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

"It is the feeling of many persons in this House that, since we have established a common citizenship throughout India, irrespective of the local jurisdiction of the provinces and the Indian States, it is only a concomitant thing that residence should not be required for holding a particular post in a particular State because, in so far as you make residence a qualification, you are really subtracting from the value of a common citizenship which we have established by this Constitution or which we propose to establish by this Constitution. Therefore in my judgment, the argument that residence should not be a qualification to hold appointments under the State is a perfectly valid and a perfectly sound argument. At the same time, it must be realised that you cannot allow people who are flying from one province to another, from one State to another, as mere birds of passage without any roots, without any connection with that particular province, just to come, apply for posts and, so to say, take the plums and walk away. Therefore, some limitation is necessary. It was found, when this matter was investigated, that already today in very many provinces rules have been framed by the provincial governments prescribing a certain period of residence as a qualification for a post in that particular province. Therefore the proposal in the amendment that, although as a general rule residence should not be a qualification, yet some exception might be made, is not quite out of the ordinary. We are merely following the practice which has been already established in the various provinces. However, what we found was that while different provinces were laying down a certain period as a qualifying period for posts, the periods varied considerably. Some provinces said that a person must be actually domiciled. What that means, one does not know. Others have fixed ten years, some seven years and so on. It was therefore felt that, while it might be desirable to fix a period as a qualifying test, that qualifying test should be uniform throughout India.

Consequently, if that object is to be achieved, viz., that the qualifying residential period should be uniform, that object can be achieved only by giving the power to Parliament and not giving it to the local units, whether provinces or States. That is the underlying purpose of this amendment putting down residence as a qualification."3

27. It was ultimately decided that residence cannot be a ground for discrimination in matters relating to employment, but in situations which necessarily demand prescription of residence within any State or UT as an essential qualification, it should be the Parliament (and not State legislatures) which should be empowered to make a law for that purpose, so that there is a uniformity throughout India on this.

28. But all this was again on Article 16, which deals with the matters of service and employment under a State. As compared to Article 16, Article 15 is a general provision having a wider application (including the issue of reservation to college admissions), and it does not contain 'residence' as one of the prohibitory grounds, and apparently one can say that Article 15 does not bar the State from making 'residence' as a requirement, for admission in medical CONSTITUENT ASSEMBLY DEBATES, VOL-VII, pgs.700-701. colleges or like matters. We must, however, remember that both Article 15 and Article 16 are different facets of the concept of equality, embodied in Article 14 and therefore, a legislation can still be struck down if it creates an unjustifiable classification, such as between residents of a State and all others. Article 15 does not speak of 'residence', it only speaks of 'place of birth' and the two concepts are different (D.P. Joshi v. State of Madhya Pradesh AIR 1955 SC 334). Article 16 does speak of residence but then it is in the context of employment under a State, with which we are presently not concerned. Yet the residence requirement has still to pass muster Article 14 of the Constitution of India.

29. It is now necessary to refer to the detail reasoning given in Pradeep Jain as to why residence-based reservation in PG Medical courses is violative of Article 14 of the Constitution of India, though to maintain a balance and for consideration of local needs such reservation may be permissible in MBBS courses. The reasoning given was that it is the State which spends money on creating the infrastructures and bears the expenses for running a medical college, and therefore some reservation at the basic level of a medical course i.e. MBBS can be permissible for the residents of that State. The classification between residents and others here can be justified as the classification seeks to maintain a balance as it considers local needs, backwardness of the area, the expense borne by the State in creating the infrastructure, etc. The reason as to why residence-based reservation is permissible for MBBS Course and not for higher courses i.e. starting from PG Course in medicine, is given in Jagadish Saran as well as Pradeep Jain. It is extremely well articulated by Justice Krishna Iyer in Jagadish Saran. Therefore the reasoning given for this classification must be reproduced in order to get a better understanding as to why it was done. Firstly, the fundamental reason as to why reservation must be given in educational institution was stated as follows :- (SCC p. 785 para 40) "40. ... The class which enjoys reservation must be educationally handicapped. The reservation must be geared to getting over the handicap. The rationale of reservation must be in the case of medical students, removal of regional or class inadequacy or like disadvantage. The quantum of reservation should not be excessive or societally injurious, measured by the overall competency of the end-product viz. degree- holders. A host of variables influence the quantification of the

reservation. But one factor deserves great emphasis. The higher the level of the speciality the lesser the role of reservation. Such being the pragmatics and dynamics of social justice and equal rights, let us apply the tests to the case on hand." For this reason, reservations at MBBS level was justified :- (SCC p. 785 para 42) "42. MBBS is a basic medical degree and insistence on the highest talent may be relaxed by promotion of backward groups, institution- wise chosen, without injury to public welfare. It produces equal opportunity on a broader basis and gives hope to neglected geographical or human areas of getting a chance to rise.

Moreover, the better chances of candidates from institutions in neglected regions setting down for practice in these very regions also warrants institutional preference because that policy helps the supply of medical services to these backward areas. After all, it is quite on the cards that some out of these candidates with lesser marks may prove their real mettle and blossom into great doctors. Again, merit is not measured by marks alone but by human sympathies. The heart is as much a factor as the head in assessing the social value of a member of the profession. Dr Samuel Johnson put this thought with telling effect when he said:

> "Want of tenderness is want of parts, and is no less a proof of stupidity than of depravity." We have no doubt that where the human region from which the alumni of an institution are largely drawn is backward, either from the angle of opportunities for technical education or availability of medical services for the people, the provision of a high ratio of reservation hardly militates against the equality mandate viewed in the perspective of social justice." But then the same principle will not be applicable when we talk of higher level of education like PG Medical Courses and the reason given in Jagadish Saran is in para 23 :- (SCC pp. 778-79, para
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> 23) "The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of speciality where the best skill or talent, must be handpicked by selecting according to capability. At the level of PhD, MD, or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in-the-

making is a national loss, the considerations we have expanded upon as important lose their potency. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk. The Indian Medical Council has rightly emphasised that playing with merit for pampering local feeling will boomerang. Midgetry, where summitry is the desideratum, is a dangerous art. We may here extract the Indian Medical Council's recommendation, which may not be the last word in social wisdom but is worthy of consideration:

> Students for post-graduate training should be selected strictly on merit judged on the basis of academic record in the under-graduate course. All selection for post-graduate studies should be conducted by the universities."

30. It was reiterated further : (SCC p. 785 para 39) “39. If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post- graduate courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise. In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless.” These findings in Jagadish Saran have been approved and followed in Saurabh Chaudri (SCC p.168 para 48).

31. We are all domiciled in the territory of India. We are all residents of India. Our common bond as citizens and residents of one country gives us the right not only to choose our residence anywhere in India, but also gives us the right to carry on trade & business or a profession anywhere in India. It also gives us the right to seek admission in educational institutions across India. The benefit of ‘reservation’ in educational institutions including medical colleges to those who reside in a particular State can be given to a certain degree only in MBBS courses, for which we have assigned reasons in the preceding paragraphs. But considering the importance of specialists doctors’ in PG Medical Course, reservation at the higher level on the basis of ‘residence’ would be violative of Article 14 of the Constitution of India. This has been explained with pronounced clarity both in Jagadish Saran and Pradeep Jain. If such a reservation is permitted then it would be an invasion on the fundamental rights of several students, who are being treated unequally simply for the reasons that they belong to a different State in the Union! This would be a violation of the equality clause in Article 14 of the Constitution and would amount to a denial of equality before the law.

32. The law laid down in Jagadish Saran and Pradeep Jain has been followed by this Court in a number of decisions including the Constitution Bench decision in Saurabh Chaudri. We may also refer here judgments such as Magan Mehrotra and Ors. v. Union of India (UOI) and Ors. (2003) 11 SCC 186, Nikhil Himthani vs. State of Uttarakhand and Others (2013) 10 SCC 237, Vishal Goyal and Others v. State of Karnataka and Others (2014) 11 SCC 456 and Neil Aurelio Nunes (OBC Reservation) and Others v. Union of India and Others (2022) 4 SCC 1, which have all followed Pradeep Jain. Thus, residence-based reservations are not permissible in PG medical courses.

33. Having made the above determination that residence-based reservation is impermissible in PG Medical courses, the State quota seats, apart from a reasonable number of institution-based

reservations, have to be filled strictly on the basis of merit in the All- India examination. Thus, out of 64 seats which were to be filled by the State in its quota 32 could have been filled on the basis of institutional preference, and these are valid. But the other 32 seats earmarked as U.T. Chandigarh pool were wrongly filled on the basis of residence, and we uphold the findings of the High Court on this crucial aspect.

34. We make it clear though that our declaration of impermissibility of residence-based reservation in PG Medical courses will not affect such reservations already granted, and students are undergoing PG courses or have already passed out in the present case, from Government Medical College, Chandigarh. We do this simply because now there is an equity in favour of such students who must have already completed the course. Logically, therefore, the present appellants who were granted admission under the residence category and were undergoing their course, & also by virtue of the interim order of this Court dated 09.05.2019, will not be affected by our judgment.

35. The present appeal stands disposed of in the above terms. The connected appeals and writ petition stand decided in the light of our order in the present case.

36. Pending application(s), if any, stand(s) disposed of.

……J. [HRISHIKESH ROY] ……J. [SUDHANSHU DHULIA] .....J. [S.V.N. BHATTI] New Delhi.

January 29, 2025.