also the detention order is bad. But, the contention of the respondents is that the petitioners have been absconding and, therefore, the orders could not be served. According to the respondents they had to issue even a Red Alert Notice with regard to the petitioners and, therefore, it cannot be stated that there is any undue delay. The respondents have also produced the copies of the Red Alert Notice as annexures with their reply. Though, the petitioners stated that they were available for service of the detention order, there is no material to hold that the respondents did not serve the detention order though the petitioners were available.

(50) Though the petitioners have taken certain other objections also, I am of the view that it is not necessary to consider them in view of my findings rendered above against the respondents. Accordingly, the petitions have to be allowed.

(51) In the result, both these petitions are allowed setting aside the impugned detention orders. The petitioners are ordered to be set at liberty unless they are required in some other proceedings.

S.C.K.

Before H.S.Bedi, J

KIRAN DIXIT,—*Petitioner*

versus

CHANDIGARH ADMINISTRATION & ANOTHER,—*Respondents*

CWP 2731 of 1998

27th March, 1998

Constitution of India, 1950—Arts. 14, 226/227—Admission—Eligibility—Admission to M.B.B.S. course—Notification dated 22nd January, 1998—Stipulation that only those candidates are eligible for admission who have passed +1 and +2 examination from School/College in Chandigarh & recognised by Chandigarh Administration—Held that this condition amounted to 100% reservation on the basis of institutional preference—Not permissible—Clause struck down as ultra vires.

Held that all 50 seats available for being filled in for the M.B.B.S. course in the respondent-college, have been reserved for

candidates who were eligible in terms of clauses (a), (b) & (c) of Clause 1, in other words, 100 per cent seats have been reserved on the basis of institutional preference. This is wholly impermissible.

(Pars 12)

Further held, that the words "and situated in the U.T. of Chandigarh, as regular students of the said School/Colleges" mentioned in clause 1 (b) of the notification are held to be ultra vires as being arbitrary and are, therefore, struck down.

(Para 14)

Dr. Balram K. Gupta and Amar Vivek Advocate, *for the Petitioner*

Ashok Aggarwal, Sr. Advocate with J.S. Sindhu, Advocate, *for the respondent.*

JUDGMENT

H.S. Bedi, J. (Oral)

(1) The petitioner, a minor, who has filed the present writ petition through her grand-father, has challenged Clause 1(b) of the Notification, Annexure P-1, dated 22nd January, 1998, with respect to admissions to the M.B.B.S. course to be conducted by the Government Medical College, Sarai Building, Sector 32-A, Chandigarh, on the ground that the stipulation laid in the clause that a candidate to be eligible for admission should have passed the +1 and +2 Examination from a School/College recognised by the Chandigarh Administration and situated in the Union Territory of Chandigarh as regular students of the said School/College, as being arbitrary and violative of Article 14 of the Constitution of India. It is the admitted position that no admission have so far been made as a consequence of the Notification Annexure P-1 but apprehending that the would be kept out, the petitioner has come to this Court before the start of the admission.

The facts of the case are as under :—

(2) The petitioner is the daughter of one Col. Ravinder Dixit, who is a serving army officer. It is the petitioner's case that on account of the exigencies of service, her father had been posted at various locations outside the Union Territory of Chandigarh between May, 1992 till date and, as a consequence of his frequent postings, she too had studied in various schools outside the Union Territory of Chandigarh. These institutions are detailed below :

S. No	School Studied	Class Attended	Year & Month
1.	Kendriya Vidyalya Manauri (U.P.)	7th & 8th Mid-term	May 92 to Oct. 93
2.	Kendriya Vidyalya Shillong (Meghalya)	8th & 9th Mid-term	Oct. 93 to Jan. 1994
3.	Kendriya Vidyalya Bengdubi (West Bengal)	9th, 10th and 11th	Jan. 1994 to April, 1996
4.	Kendriya Vidyalya Command Hospital, Calcutta.	12th	April 1996 to March, 1997

(3) It is also the petitioner's case that though the Notification, Annexure P-1, pertained to various other medical and engineering courses, yet the stipulation contained in condition No. 1(b) had been imposed only qua the MBBS course and for that additional reason, it was discriminatory as well.

(4) Notice of motion was issued in this case and a written statement has been filed by the Principal of the Government Medical College, Chandigarh on behalf of respondent No. 1. It has been pointed out that the condition impugned had been upheld by this Court as also by the Hon'ble Supreme Court and, as such, no fault could be found with it. The broad facts that have been alleged by the petitioner have, however, not been denied by the respondents. The question posed is, therefore, a purely legal one.

(5) Dr. Balram Gupta, the learned counsel for the petitioner, has argued that Clause 1(b) amounted to creating a 100 per cent reservation for students who had taken their +1 and +2 Examination from the Union Territory of Chandigarh and that this clause was totally unjustified on account of the judgments of the Supreme Court in *Anant Madaan* v. *State of Haryana and others* (1), *Meenakshi Malik* v. *University of Delhi and others* (2), wherein it was held that such a condition could not be imposed. Reliance has also been placed on a judgment of this Court in *Meenal Sharma* v. *State of Haryana and another* (3).

(6) As against this, Mr. Ashok Aggarwal representing the Union Territory Chandigarh, has urged that a similar policy had

(1) 1995 (1) SLR 714
(2) 1992 (2) Recent services judgment 611
(3) 1994 (3) SLR

been upheld in Meenal Sharma's case (supra) as also in *Anup Singh* v. *State of Punjab and others* (4) and, as such, this petition could not succeed. While dealing with Meenakshi Malik's case (supra), Mr. Aggarwal has argued that this judgment did not lay down any law but had dealt with the matter on the facts of the case and the Court had observed that as it was a case of individual hardship, the petitioner was entitled to succeed on that ground alone.

(7) I have heard the learned counsel for the parties and have gone through the record. Condition No. 1(b) which has been impugned in the present proceedings is reproduced below :—

> 1. M.B.B.S. (Govt. medical College, Sarai Building, Sector 32-A, Chandigarh : (50 seats)
>
> (b) have passed both +1 (11th class) and +2 (12th class) examination from Schools/Colleges recognised by the Chandigarh Administration and situated in the U.T. of Chandigarh, as regular students of the said Schools/ Colleges with 50% marks in the aggregate of Physics, Chemistry.

(8) In Meenakshi Malik's case (supra) the Hon'ble Supreme Court was called upon to construe a similar provision which provided that in order to get admission in one of the three Medical Colleges in Delhi, a candidate had to pass the 11th and 12th class examination from Delhi. It appears that Meenakshi Malik's father, who was a government employee and had been posted to a foreign country on account of the exigencies of service with the result that he could pass only7 the 12th class examination from Delhi, whereas the examination of the 11th class was taken in a school outside Delhi. It was in this situation that Hon'ble Supreme Court observed as under :

> It seems to us that the qualifying condition that a candidate appearing for the entrance Examination for admission to a Medical College in Delhi should have received the last two years of education in a school in Delhi is unreasonable when applied in the case of those candidates who were compelled to leave India for a foreign country by reason of the posting of the parent by the Government to such foreign country. There is no

(4) 1995 (3) RSJ 788

real choice in the matter for such a student, and in many cases the circumstances of the student to not permit her to continue schooling in India. It is of course theoretically possible for a student to be put into a hostel to continue her schooling in Delhi. But in many cases this may not be feasible and the student must accompany a parent to the foreign country. It appears to us that the rigour of the condition prescribing that the last two years of education should be received in a school in Delhi should be relaxed, and there should be no insistence on the fulfilment of that condition, in the case of students of parents who are transferred to a foreign country by the Government and who are, therefore, required to leave India along with them. Rules are intended to be reasonable, and should take into account the variety of circumstances in which those whom the rules seek to govern find themselves. We are of opinion that the condition in the prescription of qualifications for admission to a medical college in Delhi providing that the last two years of education should be in a school in Delhi should be construed as not applicable to students who have to leave India with their parents on the parent being posted to a foreign country by the Government.

Accordingly, the denial of admission to the petitioner to a seat in one of the Medical Colleges in Delhi must be held to be unreasonable."

(9) It is, therefore, apparent that the Hon'ble Supreme Court held that the condition of the kind imposed was unreasonable and such a condition should be construed as not applicable to students who had to leave India with their parents for reasons beyond their control. Although, it is true, as has been contended by Mr. Aggarwal, that the observations of the supreme Court were with reference to a foreign service but, to my mind, these observations would fully apply to the case of defence personnel, who for reasons beyond their control undergo frequent transfers and have to remain posted outside the places of their domicile. While construing an identical rule with regard to admission to a Medical College in Maharashtra,

a Division Bench of the Bombay High Court in *Ku. Archana* v. *The Dean, Government Medical College, Nagpur and others* (5) observed as under :—

> "Shri Kherdekar, the learned counsel for the petitioner, contended that having regard to the object of the Rules, its background, the language used in Cl. B(5) and the ratio of various Supreme Court decisions on the validity of various reservation on region/residence basis, the requirement of passing Indian School Certificate Examination "from an institution located in Maharashtra State" is not intended to be applied to the candidates covered by R. B(3). It seems to us that the contention is well-founded. Course and the examination of the Indian School Certificate Examination is common all over India. Serviceman has no control on his posting which can be anywhere including Maharashtra. Rule of denial of admission to a meritorious son/daughter of a serviceman who is domicile of Maharashtra only because of a fortuitous circumstances of his being not posted at the time of his ward studying in 12th Standard within the State of Maharashtra cannnot have any nexus to the object of the Rule. Mere chance cannot be the valid disqualifying factor. Such a rule will not only be arbitrary and unreasonable but will permit discrimination between two classes of servicemen of Maharashtra domicile actually posted at material time (i) in Maharashtra and (ii) outside Maharashtra. This classification will be clearly invidious having no nexus whatsoever to the object sought to be achieved. Supreme Court has repeatedly held against denial of admissions only on the basis of residence and/or region. Canons of interpretation mandates that interpretation which leads to unconstitutionality has to be avoided, and harmonious construction to be preferred, if possible. Thus the rule will have to be interpreted keeping the above principles in view. The rule is not clearly worded and does present some difficulty in construing it."

(10) It bears notice that this judgment was specifically approved in Meenal Sharma's case (supra).

(5) AIR 1987 Bombay 155.

(11) Mr. Aggarwal's additional argument that the Hon'ble Supreme court had, in fact, upheld the rule in question in Anant Madan's case, is without merit for the reason that the rule that was under consideration was substantially different. The said rule is reproduced below :—

(i) The candidates who have studied 10th, 10+1 and 10+2 classes as regular candidates in recognised institutions in Haryana.....

(ii) The children/wards..... of the employees appointed on regular basis of Haryana State Government/Members of All India Services borne on Haryana cadre/statutory bodies/corporations established by or under an Act of the State of Haryana whether posted in Haryana or outside.....

(iii) The children/wards ..... of the employees of Indian Defence Services/Paramilitary Forces belonging to Haryana State at the time of entry into service as per their service records....."

(12) As a matter of fact, in this judgment it has been specifically laid down that though preference in admissions could be made on the basis of residence as well as on the basis of institutional preference yet there could be no total reservation on that basis. It is evident therefore, that this judgment, as a matter of fact, goes against the argument advanced by Mr. Aggarwal. In addition to the fact that the rule that was held to be valid provided two exceptions in clauses (ii) and (iii) reproduced above, the Court also found that reservation of 100 per cent was bad. In the case before me today it is apparent that all 50 seats available for being filled in for the MBBS course in the respondent-College, have been reserved for candidates who were eligible in terms of clauses (a), (b) and (c) of Clause 1, in other words, 100 per cent seats have been reserved on the basis of institutional preference. This is wholly impermissible. Mr. Aggarwal's reliance on Anup Singh's case (supra) in support of his plea is also untenable. In the said case the challenge was to the provisions contained in paras 1, 2, 3 (iii) of the admission brochure for admission to the Engineering Course in the Baba Banda Singh Engineering College, Fatehgarh Sahib, which was affiliated to Guru Nanak Dev University, Amritsar,

wherein it had been provided that admission to the seats in that college would be open to only those students who had passed the 10+2 examination from Schools/Colleges situated in the State of Punjab and were of Punjab Domicile *except four seats which were reserved for candidates of Punjabi origin settled in other States/ abroad for which they would have to produce a domicile certificate from the respective State.* This clause was upheld by this Court on the premise that a certain percentage of seats in the college had been reserved for outside students and, as such, it was not a case of 100 per cent reservation. Moreover, it is evident that seats on the basis of institutional preference or domicile had been reserved only in the Baba Banda Singh Engineering College and not in the other Engineering Colleges affiliated to the Guru Nanak Dev University, Amritsar. As already mentioned above, the position before me is substantially different and all 50 seats have been reserved for those candidates who fulfil the condition laid down in clause 1(b), and no exceptions have been carved out.

(13) Mr. Aggarwal has then argued that if it is held that the clause impugned was bad in law, it must be left open to the Administrators dealing with the matter to re-frame a proper policy with regard to admissions. In this connection, he had placed reliance on *Chandigarh Administration and others* v. *Manpreet Singh and others* (6). There can be no quarrel with the proposition advanced by Mr. Aggarwal. This Court is only called upon to examine the validity of a particular clause in the Notification, Annexure P-1, and it is always open to the authorities concerned to make an amendment in such a way that brings it in conformity with law.

(14) I am, therefore, of the opinion that the words "and situated in the U.T. of Chandigarh, as regular students of the said School/Colleges" mentioned in clause 1(b) of the notification, Annexure P-1, are held to be *ultra vires* as being arbitrary and are, therefore, struck down, *Ipso facto* the petitioner who fulfils the other qualifications laid down in the Notification Annexure P-1 for admission to the MBBS course, will be permitted to take the Entrance Test, if she so desires. There will be no order as to costs. Dasti order.

J.S.T.

(6) AIR 1992 S.C. 435.