

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

**C.M.No.13219 of 2012 in/and
CWP No. 15667 of 2012
Date of Decision:- 29.09.2012**

Viraaj Pratap Singh Pannu

....Petitioner(s)

vs.

Chandigarh Administration and others

....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present:- Mr.Rajiv Atma Ram, Senior Advocate with
Mr.Saurabh Arora, Advocate,
for the petitioner.

Mr.Sanjay Kaushal, Standing Counsel
for Chandigarh Administration.

Mr.Manmohan Singh, Senior Advocate with
Mr.Rajiv Joshi, Advocate and
Mr.M.P.Gupta, Advocate,
for respondent No.3.

Mr.Vikas Singh, Advocate,
for respondent No.4.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the admission granted to Ms. Arunjeet Goshal-respondent No. 3 and Gurpal Singh Brar-respondent No. 4 to the MBBS course at Government Medical College and Hospital, Sector-32, Chandigarh, against the seats earmarked for the Foreign Indian Students (NRI) primarily on the ground that they do not fulfil the requirements as mandated in the Centralized Admission Brochure for

MBBS/BDS/BAMS/BHMS Courses for the Session 2012, Chandigarh, under the heading 'Foreign Indian Students (NRI) Seats'.

Chandigarh Administration issued Centralized Admission Brochure for admission to MBBS/BDS/BAMS/BHMS courses for the Session 2012. Under the heading 'Important Notice' which dealt with Foreign Indian Students (NRI) Seats provided that no entrance test is required for the candidate seeking admission against these seats. Non-Resident Indian (in short 'NRI') candidates to be admitted on the basis of merit of their qualifying examination equivalent certificate for which is to be issued by the Panjab University, Chandigarh. All admissions against the NRI seats in the Panjab University, Chandigarh, were strictly limited to genuine Non-Resident Indians and/or their sons and daughters as provided, vide Panjab University letter No. Misc./A-6/6126-6376, dated 13.6.2008. Petitioner as also private respondents No. 3 and 4 alongwith other candidates applied under this category. Respondent No. 2 prepared an inter se merit of candidates as per Clause 11, according to which respondent No. 3 was placed at merit No. 1, respondent No. 4 at merit No. 4 and petitioner at No. 5. Candidate at merit No. 3, namely, Parneet Sandhu did not take admission as he had got admission elsewhere. Admission of candidate at merit No. 3, namely, Tameena Arora is not under challenge. There are total three seats which have been earmarked for the distribution of seats as per para-3 with the heading 'Distribution of Seats for the NRI category' in the Government Medical College and Hospital, Sector-32, Chandigarh. In the light of non-joining of Parneet Sandhu, Gural Singh Brar-respondent No. 4 has got an opportunity and petitioner is the next in waiting.

Under the NRI category, three seats have to be filled up as per

the preference order given under the heading 'Foreign Indian Students (NRI) Seats'. As per Clause (a), first preference is to be given to those NRI candidates who have ancestral background of Chandigarh. As we are concerned with this category only in the present case, the other category of NRI candidates need not be mentioned here as according to Note 1, if sufficient number of candidates under the first category are eligible and available then they will be admitted first even if students under subsequent category are higher in merit. For a candidate to fall in first category of NRI candidates, the requirement to be fulfilled is as per Note 4, according to which for ancestral background of Chandigarh, the grand-parents/parents of the candidate should be resident of Chandigarh for a minimum period of five years at any time since the origin of Chandigarh and should have immovable property in his/her name in Chandigarh for the last at least five years. A certificate to this effect is required from Deputy Commissioner-cum-Estate Officer or Municipal Corporation of Chandigarh.

Petitioner has approached this Court asserting that the requirement of Note 4 has not been fulfilled by respondents No. 3 and 4. As regards Ms. Arunjeet Goshal-respondent No. 3, it has been mentioned that she has given her postal address as House No. 194, Sector-4, Panchkula, Haryana, which house is in the name of her father Shri Gurcharan Singh, whereas her father claims to be a permanent resident of SCF 305, Motor Market, Mani Majra, Chandigarh, which is a commercial property and is not used as a residential premises on any of the floors. Photographs of the site taken on 16.7.2012 have been placed on record as Annexures-P-4 and P-4/A. Photograph alleged to be taken on 4.8.2012 of the same premises has been placed on record as Annexure-P-4/B wherein it has been shown that

the door of the entrance from the front to the first floor and second floor has been painted white and a board put thereon stating it to be the residence of Shri Gurcharan Singh, top floor, SCF No. 305, which the petitioner contends has been placed anticipating the filing of the present petition. Photographs of the house of the mailing address have also been placed on record as Annexures-P-5, P-5/A and P-5/B and it has been alleged that respondent No. 3 and her family are residing there. They do not have voter cards or ration card of Chandigarh. It has been asserted that a fabricate certificate showing the father of respondent No. 3 to be a resident of Chandigarh has been obtained on the ground that it has been shown that the father and mother of this respondent are as stated in the application form to be doing business in Canada and, therefore, it is asserted that respondent No. 3 is not a genuine NRI candidate with ancestral background in UT Chandigarh. Respondent No. 3 is a Canadian national but had studied for her Classes 10+1 and 10+2 at Saint Soldier School, Dhakoli, Punjab, and being a foreign national was required to register herself with Foreigners' Regional Registration Office (in short 'FRRO'), Chandigarh, which she or her father have not recorded and, therefore, are not entitled to the claim as has been made by them against the NRI seat and thus the admission granted to her cannot sustain.

As regards the challenge of the admission of Gurpal Singh Brar-respondent No. 4, it has been stated that as per the RTI information received by the petitioner, respondent No. 4 has given his mailing address as House No. 800/1, Mohalla Jatta Wala, Mani Majra, Chandigarh, UT, and has given his permanent address of California, USA. He has given his father's occupation as in University Police Department and his mother as

University Library Head of reference. However, the resident certificate issued by the Chandigarh Administration, UT, certifies that the father of respondent No. 4, namely, Shri Rajinder Singh Brar is a resident of House No. 800/1, Mohalla Jatta Wala, Mani Majra, Chandigarh, U.T. since 12.7.2006. It has further been stated that respondent No. 4 has attached certificate of the Municipal Corporation regarding ownership of this house which depicts transfer deed to be in favour of the father of respondent No. 4 only on 5.10.2007 and since five years have not passed, when the father of respondent No. 4 has become the owner of the property, the requirement of Note 4 qua this respondent is also not fulfilled. It is on this basis that the admission of respondent No. 4 is challenged.

Short reply on behalf of Director Principal, Government Medical College and Hospital, Sector-32, Chandigarh, has been filed, wherein it has been stated that the merit list has been prepared on the basis of eligibility and equivalence of the candidate who had applied under this category. Since respondents No. 3 and 4 had submitted the required certificates issued by the appropriate authority, i.e. Deputy Commissioner, Chandigarh/Sub Divisional Magistrate, respondent No. 2 had proceeded to grant admission to respondents No. 3 and 4 as per the terms and conditions laid down under the Centralized Admission Brochure and are limited to only genuine NRI candidates.

Reply on behalf of respondent No. 3 has also been filed, wherein preliminary objections have been raised with regard to maintainability of the writ petition. It has been asserted that there is no infraction of any fundamental or statutory right of the petitioner and, therefore, admission cannot be claimed as a right much less at the cost of

grievance of higher academic merit. Admission brochure has no force of law. The writ is not maintainable for non-joinder of necessary parties as neither Panjab University, Chandigarh, been arrayed as a respondent, nor Deputy Commissioner-cum-Estate Officer has been impleaded as a party, especially when the certificates issued by this authority has been challenged by the petitioner through the present writ petition.

Locus of the petitioner to file the present writ petition has been challenged on the ground that he is not a citizen of India and, therefore, cannot invoke the writ jurisdiction of this Court. It has further been asserted that the term 'grand parents' appearing in Note 4 of Clause (1)(a) of Foreign Indian Students to MBBS course of admission brochure (Annexure-P-1) as per legal parlance is only referable to patriarch descendants, i.e. it does not refer to matriarch descendants. Petitioner is a real maternal grandson of Lt. Col. (Retd.) Thakur Singh, who is a co-owner of House No. 65, Sector-8-A Chandigarh and, therefore, is not entitled to admission in MBBS course as he is not eligible. A ground has been taken that the petitioner has raised disputed questions of facts which cannot be resolved in exercise of writ jurisdiction and, therefore, resort should be had to the proper forum.

On merits, it has been asserted that the petitioner fulfills the requirements as mandated under Clause 1(a) read with Note 4 as proper certificate has been issued by the competent authority as per the requirement of the admission brochure by the Sub Divisional Magistrate (East), UT Chandigarh, stating therein that father of the petitioner is a resident of SCF No. 305, Motor Market, Mani Majra, UT, Chandigarh since July 2005 and is thus a resident of Union Territory, Chandigarh. It has further been asserted

that till date, second floor of SCF No. 305 is used for residential purposes by the answering respondent and her parents for the last over seven years. Father of the respondent became the owner of the property in the year 1996 and is still holding the said property as the owner. Reliance has also been placed upon the registration certificates of the car and scooter of the father of respondent No. 3 (Annexures-R-3/4 and R-3/6) as also the insurance covers. Electricity bills pertaining to the second floor of SCO No. 305 has been appended as Annexure-R-3/8 to R-3/10 to assert that respondent No. 3 is residing there alongwith her parents. An explanation has been given as to why she had given her mailing address of Panchkula by asserting that the said house is in possession of Chatha Food Limited, Chandori, Tehsil Dera Bassi, District Mohali, where the parents of respondent No. 3 are partners. The father Shri Gurcharan Singh Goshal being the Financial Director and mother Smt. Gurpal Kaur being Manager (Administration) are gainfully employed and have to attend their respective jobs right from 8:00 AM till late hours of the day. They, therefore, remain away from SCF No. 305, Commercial Complex, Mani Majra and with a fear that she may not lose her mail, the said address has been given. It has been asserted that the requisite fee stands deposited with the Government Medical College and Hospital, Sector-32, Chandigarh, and the same was paid in dollars. To show that the father of respondent No. 3 stays in India, arrival and departure stamped on the passport have been placed on record as Annexures-R-2/3 and R-3/3. It has been asserted that parents of the respondent No. 3 have property business in Canada, which is being looked after through a care-taker and it is asserted that the petitioner is a genuine NRI candidate. The objection raised with regard to non-registration of respondent No. 3 and her parents

with the FRRO has been answered by asserting that it is not part of the requirement under the admission brochure. Even otherwise, in view of the Overseas Citizenship of India Scheme under The Citizenship Act, 1955 and Notification No. SO 542(E) dated 11.4.2005 issued under Section 7 (A) of the Citizenship Act, 1955, respondent No. 3 and her parents are exempted from registration with the FRRO for any length of stay in India. It has been asserted under this notification overseas citizen of India is entitled to parity with NRIs in respect of all facilities available to them which would include educational field. On this basis, it has been asserted that the writ petition apart from being not maintainable deserves to be dismissed on merits as well.

Respondent No. 4 has also filed a separate reply wherein it has been asserted that he fulfils the requirements as provide under Note 4 of Clause 1(a) of the Non-Resident Indian. According to the said Note, what is required is that the parents/grand parents of the candidate should be resident of Chandigarh for a minimum period of five years at any time since the origin of Chandigarh and also have immovable property in their name in Chandigarh for at least five years. The paternal grandmother of respondent No. 4 became owner of House No. 800/1, Jatta Wala Mohalla, Mani Majra, Chandigarh by purchasing it on 1.2.2006. Thereafter, this house was transferred in the name of father of respondent No. 4, namely, Rajinder Singh Brar, vide transfer deed under the blood relation on 19.9.2007. It is thus clear that the parents/grand-parents of the answering respondents have been residing in Chandigarh and had held property for more than five years. It has further been asserted that father of the respondent No. 4 had been visiting Chandigarh every year and is maintaining his residence at

Chandigarh from 26.5.2006 till 1.9.2012. Father of this respondent had remained in India for 1120 days, i.e. more than 36 months, details thereof have been attached as Annexure-R-4/7 with the reply. It has been asserted that the mother of the answering respondent, namely, Navjeet Katyal had her schooling and then her education till graduation at Chandigarh. She had been residing with her parents all through her student life and, therefore, fulfills the mandate of resident of five years at Chandigarh, as per the requirement. It has further been asserted that the father of the respondent No. 4 is an overseas citizen of India and has been issued the Overseas Citizenship of India Card and, therefore, no registration with the FRRO, Chandigarh, is required. On this basis, it has been asserted that the writ petition qua this respondent deserves to be dismissed as the same is devoid of any merit.

An application i.e. CM No. 12251 of 2012 has been file during the pendency of the writ petition through which Annexure-A has been placed on record which contains gist of statements recorded during an inquiry conducted by the police with regard to residential proof submitted by respondents No. 3 and 4. To this application, reply has been filed by respondent No. 3 wherein it has been asserted that the said inquiry and the report submitted by the police carries no weight in the light of the certificate which has been issued by the competent authority, i.e. Deputy Commissioner-cum-Estate Officer, Chandigarh, which in any case, is a higher authority. The report is based upon conclusion drawn by an Inspector which is based upon oral statements and cannot have precedence over the documentary proof.

Before the case could be opened by the counsel for the

petitioner, learned senior counsel appearing for respondent No. 3 Ms. Karanjit Goshal has raised objections with regard to the maintainability of the present writ petition. He contends that the petitioner is an American citizen and he being not a citizen of India has no right to invoke the extraordinary jurisdiction of this Court. There is no infraction of any fundamental or statutory right of the petitioner as the seats reserved for Foreign Indian Students (NRI) for M.B.B.S. Course in the respondent No. 2-College are ex-gratia and, therefore, the right cannot be claimed for admission on the basis of the admission brochure (Annexure P-1), wherein the opening clause of the brochure reads that this brochure is for information only and does not constitute a legal document, which is liable to the alteration and modification without any prior notice after due approval of the Admission Committee. He further contends that the letter dated 13.06.2008, as referred to in Clause 11 requiring all admissions against NRI seats in the Punjab University to be strictly limited to genuine NRIs and/or their sons and daughters, also does not have any force of law as the said letter could, at best, be termed as mere instructions. In support of this contention that the brochure and the instructions do not have any force of law, reliance has been placed upon the judgments of the Division Bench of this Court in **Om Parkash Dhri and others vs. State of Punjab**, AIR 1951 SC 93, **Sri Dwarka Nath Tiwari and others vs. State of Bihar and others**, AIR 1959 SC 249.

Another objection raised by the counsel is that the necessary parties to the writ petition have not been impleaded i.e. the University, the Deputy Commissioner, the Estate Officer and the Municipal Commissioner as the certificates, which have been issued by these authorities, have been

challenged by the petitioner to be either fake or obtained through fraud. In the absence of these authorities being party to the writ petition, the writ petition cannot proceed. It has further been asserted that the disputed questions of fact cannot be gone into and settled by this Court in exercise of its writ jurisdiction. Reference has been made to the judgment of the Supreme Court in the case of **Sohan Lal vs. Union of India and others**, AIR 1957 SC 529 and **Leelawati Bai vs. State of Bombay**, AIR 1957 SC 521. An objection with regard to the eligibility of the petitioner has been raised to the effect that the grandparents as per Note 4 are applicable to patriarchy. Since the petitioner is claiming his benefit through his maternal grandfather (*Nana*), he is not eligible for being considered for admission to M.B.B.S. Course.

Counsel for respondent No. 3 has asserted that the certificates, which have been issued to the father of respondent No. 3, are in accordance with the requirements mentioned in the admission brochure and have been issued by the competent authorities in accordance with law. The report of the Police (Annexure-A), which has been relied upon to assert that the resident certificate issued to the father of respondent No. 3, is not correct or has been issued wrongly apart from it not being amenable to decision under the writ jurisdiction as it being disputed question of fact, cannot be gone into because the competent authority, who had issued this certificate, has not been impleaded as a party respondent. His contention is that ample documents have been placed on record, which establish that respondent No. 3 is residing with her family at SCF No. 305, Motor Market, Manimajra, Chandigarh. He has produced a copy of the site inspection report conducted by the Additional Deputy Commissioner dated 17.07.2012, which was

initiated at the behest of mother of the petitioner, who had complained that father of respondent No. 3-Sh. Gurcharan Singh was not residing in the Union Territory of Chandigarh but was residing in House No. 194, Sector 4, Panchkula, where the Additional Deputy Commissioner has found that respondent No. 3 along with her family are residing in SCF No. 305, Motor Market, Manimajra.

As regards the assertion of the counsel for the petitioner that father of respondent No. 3-Sh. Gurcharan Singh is a resident of India and is not a Non-Resident Indian, it has been asserted that the father as well as respondent No. 3 herself are citizens of Canada and under Section 7 (a) of the Citizenship Act, 1955, they are entitled to parity with Non-Resident Indian in respect of all facilities available to them in economical, financial and educational fields. He, on this basis, has contended that respondent No. 3 and her parents were not required to be registered with the Foreigner Regional Registration Office, Chandigarh as there is an exemption from registration with the Foreigner Regional Registration Office for any length of stay in India under Section 7 (a) of the Citizenship of India Scheme as notified by the Central Government vide notification dated 11.04.2005. It has further been asserted that now respondent No. 3 and her parents have registered themselves with the Foreign Regional Registration Office, Chandigarh as required for all foreign nationals staying in U.T. Chandigarh beyond 180 days. Counsel has further asserted that respondent No. 3 is higher in merit than the petitioner and, therefore, has the first right for admission and has rightly been granted admission by respondent No. 2 in M.B.B.S.Course under the NRI seats. He, on this basis, contends that the writ petition has no merit and deserves to be dismissed at the very outset as

not maintainable.

Responding to the preliminary objections raised by the counsel for respondent No. 3, learned senior counsel for the petitioner has asserted that both the private respondents Ms. Karanjit Goshal-respondent No. 3 and Gurpal Singh Brar-respondent No. 4 are also not citizens of India. The claim is based upon the brochure, which has been issued by respondent No. 2, which has been followed by making admissions to M.B.B.S. Course for the Session 2012. The private respondents have obtained admission on the basis of and because of the admission brochure and, therefore, the ground cannot be taken that the brochure does not constitute a legal document or has a force of law. He further contends that it has been held by the Full Bench of this Court in the case of **Amardeep Singh Sahota vs. State of Punjab**, 1993 (4) SLR 673, **Raj Singh vs. Maharishi Dayanand University**, 1994 (4) RSJ 289, **Sachin Gaur vs. Punjabi University, Patiala**, 1996 (1) RSJ 1, **Anil Jain vs. Controller of Examination, Maharishi Dayanand University**, 1997 (3) RSJ 88 and **Indu Gupta vs. Director of Sports, Punjab**, 1999 (4) RSJ 667 that the terms of prospectus are sacrosanct and cannot be departed from and the prospectus has the force of law. Its conditions have to be strictly construed and any relaxation in the matter may lead to illegal and arbitrary action on the part of the authorities. He, in any case, contends that the private respondents are claiming the right of admission on the basis of the admission brochure and, therefore, cannot now assert that it does not have force of law. His contention is that there is no bar for invoking the jurisdiction of this Court when Article 14 of the Constitution of India is violated. The term used in Article 14 is 'any person' whereas in some other Articles, term used is 'citizen'. Assertions with

regard to the University, Estate Officer and Municipal Corporation not being a party has been responded to by asserting that they are not necessary parties to the writ petition as there are no mala-fides alleged against them. With regard to the disputed questions of fact and the domain of this Court, counsel contends that the claim and assertions are based on documents on record, which need to be referred to and on that basis, decision is to be rendered. He, on this basis, contends that the preliminary objections raised by respondent No. 3 do not sustain and deserves to be rejected.

On merits, learned senior Advocate appearing for petitioner has referred to clause 11 of the important notice which form part of the brochure to contend that no entrance test is required for candidates seeking admission against Foreign Indian Students (NRI) seats. It is clearly mentioned therein that all the admissions against NRI seats in Punjab University must be strictly limited to genuine NRI's and/or their sons and daughters. He makes reference to clause (vi) under the heading 'Guidelines to Admission to MBBS/BDS/BAMS/BHMS/General Rules' under the sub-heading 'Foreign Indian Students (NRI) seats, clause (i), which deals with M.B.B.S. Course and has emphasized that under the NRI category, three seats shall be filled up as per the preference order given therein. The case of the petitioner as well as respondents No. 3 and 4 falls under preference order clause (a), wherein it is mentioned that first preference will be given to those NRI candidates who have ancestral background of Chandigarh. Reference to Note 4 has been mentioned in this clause and according to Note 4, for ancestral background of Chandigarh, the grand-parents/parents of students must be resident of Chandigarh for a minimum period of five years at any time since the origin of the Chandigarh and immovable property in his/her

name for the last at least five years. A certificate to this effect is required from Deputy Commissioner-cum-Estate Officer or Municipal Corporation of Chandigarh. As regards the candidature of respondent No. 3 is concerned, he contends that these conditions are not fulfilled as the said candidate and her father, through whom she is claiming the benefit for the reserved seats falling in the category of Foreign Indian Students (NRI) seats, are not resident of Chandigarh for a minimum of five years. He has referred to Annexures P-4 and P-5, which are photographs, to assert that this respondent is not a resident of Chandigarh but a resident of Panchkula. Annexures P-4, P-4/A and P-4/B are photographs of the shop-cum-office at Chandigarh and Annexures P-5, P-5/A and P-5/B are photographs of residential house at Panchkula. Reliance has also been placed upon Annexure P-6 centralized medical admission form submitted by the said respondent where under clause 4, the address of mail is mentioned as House No. 194, Sector 4, Panchkula, Haryana and the permanent address as SCF 305, Motor Market, Manimajra, Chandigarh. The country of resident has been mentioned as India. Reliance has also been made upon the report supplied to the mother of the petitioner by the Administrative Officer-cum-Central Public Information Officer, Police Headquarters, U.T. Chandigarh (Annexure-A), wherein it is concluded that the father of respondent No. 3 Sh. Gurcharan Singh has been residing permanently along with his family at House No. 194, Sector 4, Panchkula for the last five years approximately. Accordingly, prayer has been made that the criteria as laid down for getting first preference for admission to M.B.B.S. Course under the NRI seats is not fulfilled by respondent No. 3 and her admission, therefore, cannot sustain.

Another argument, which has been raised with regard to the

eligibility of respondent No. 3 and her entitlement to admission under the NRI seats, is that the father of this respondent namely Sh. Gurcharan Singh is permanent resident of India although being a citizen of Canada. He has referred to Annexures R-3/2 and R-3/3 attached with the reply filed by respondent No. 3 to assert that he had hardly stayed in Canada during the last six years. Although every year he has visited Canada but for a very short span ranging from 20 days to 45 days. He, on this basis, contends that Sh. Gurcharan Singh cannot be termed as a Non-Resident Indian although he is a Canadian citizen but for being a Non-Resident Indian, he has to be generally a resident outside India. He, on this basis, contends that the admission of respondent No. 3 deserves to be set aside. Reference has also been made to Annexures R-3/8 and R-3/9 to contend that the electricity bills, which have been attached along with the reply, show the tariff type to be non-residential supply. Meaning thereby that it was a commercial supply. The assertion of respondent No. 3, therefore, that she along with her family is residing in SCF No. 305, Motor Market, Manimajra, Chandigarh is not correct.

As regards the admission of respondent No.4-Gurpal Singh Brar, counsel has only asserted that the father of this respondent, namely, Sh. Rajinder Singh Brar is not holding property as the owner of House No. 800/1, Jattanwala Mohalla, Manimajra for the last five years as he became the owner of the said house only on 05.10.2007 when the said property was transferred in his name. He, accordingly, contends that the admission of respondent No. 4 thus, cannot sustain. Accordingly, prayer has been made for the writ petition to be allowed by quashing the admissions granted to respondents No. 3 and 4 and a prayer has also been made that the admission

be granted to the petitioner as he is the next in merit below respondent No. 4.

Counsel for respondents No. 1 and 2 has submitted that the admissions have been granted to respondents No. 3 and 4 on the basis of the submission of the certificates issued by the competent authorities as per the requirement of the admission brochure. Since the terms and conditions as laid down under the Centralized Admission Brochure were complied with, respondent No. 2 has proceeded to grant them admission.

Counsel for respondent No. 4 has referred to Note 4 under the heading 'Foreign Indian Students (NRI) seats to contend that for ancestral background of Chandigarh, the grandparents/parents of the candidate are required to be resident of Chandigarh for a minimum period of five years at any time since the origin of Chandigarh. It is not disputed by the petitioner now in the light of the reply and the only objection, which has been now raised, is that the immovable property is not owned by the father of respondent No. 4 in Chandigarh at least for the last five years. He contends that the words 'grandparents/parents' used in Note 4 do not exclude one another but are inclusive. What the intention of the Note is that the property should remain with the grandparents or parents at least for the last five years. Referring to the documents, which have been placed on record as well as the pleadings, it has been asserted that House No. 800/1, Jattanwala Mohalla, Manimajra, Chandigarh was purchased by Kuljit Kaur, paternal grandmother of respondent No. 4 on 01.02.2006. This house was transferred in the name of father of respondent No. 4 through transfer deed under the blood relation category on 19.09.2007. The property remained within the family and it is an ancestral property, which is now in the hands

of the father of respondent No. 4. The mandate of Note 4 is fully complied with as far as respondent No. 4 is concerned and, therefore, the objection as raised by the petitioner with regard to the eligibility of respondent No. 4 for admission to M.B.B.S. Course under the NRI seats cannot sustain. He contends that the father of respondent No. 4 frequently comes to Chandigarh and stays in his own house. His father, namely, Sh. Rajinder Singh Brar is an overseas citizen of India and his overseas citizen of India card has been attached and, therefore, he is not required to be registered with the Foreigner Regional Registration Office, Chandigarh. He, on this basis, contends that the writ petition filed by the petitioner qua the eligibility to the candidature of respondent No. 4 is without any basis and, therefore, the same deserves to be dismissed.

I have heard counsel for the parties and with their assistance have gone through the records of the case.

First dealing with the preliminary objections raised by respondent No.3 with regard to the maintainability of the writ petition. It has been asserted that the petitioner is not a citizen of India and, therefore, cannot invoke the writ jurisdiction of this Court. This stand of the respondent cannot be accepted in the light of the language used in Article 14 of the Constitution of India which reads as follows:-

“14. Equality before law : The State shall not deny to any person equality before law or equal protection of laws within the territory of India.”

Article 14 as reproduced above guarantees to all persons in our country equality before law and equal protection of laws, which means that all persons are equally subjective to law and have right of equal protection

in similar circumstances, both in regards to privilege conferred and liabilities imposed upon by the laws. Giving a man his due is one of the basics of justice which is reflected in the right of equality and, therefore, the benefit of this Article is not limited to the citizens only but to all persons within the Indian Territory. The Article itself is so termed and drafted that the use of the expression 'any person' clearly indicates that this right is not restricted to the citizens alone, wherever in the Constitution any restriction has been placed to the exercise and enjoyment of the fundamental right, there specific reference to that effect has been made, as provided in Articles 15, 16, 18 and 19 where it is specifically mentioned restricting the fundamental rights to the citizens. This objection, thus, of respondent No.3 cannot be accepted.

The second objection raised by respondent No.3 is that the Central Admission Brochure (Annexure P-1) has no force of law and in this regard, reference has been made to clauses 1 and 2 of important notice at page 2 wherein it is mentioned that this Brochure is for information only and does not constitute a legal document which is liable to be altered or modified without any prior notice after due approval of the Admission Committee. An assertion has also been made that the letter dated 13.6.2008 issued by the Panjab University, as mentioned in clause 11 on the same page, does not have force of law as instructions cannot be enforced in a Court of law. This objection again cannot be accepted in the light of the Full Bench judgments of this Court in **Amardeep Sahota, Rahul Parbhakar, Indu Gupta and Anil Jain's cases (supra)** wherein it has been held that the terms and conditions of the Brochure cannot be held to be mere declaratory and they have to be and must be treated necessarily. Their

compliance would be essential, otherwise the basic principle of fairness would stand frustrated. The information Brochure/Prospectus has the force of law and its conditions have to be strictly construed. In the light of the authoritative pronouncements of this Court, as referred to above, the objection of respondent No.3 cannot be accepted and it is held that the Centralized Admission Brochure has the force of law and can be made the basis for enforcing the stipulations mentioned therein.

Another objection has been taken that the term 'grandparents' appearing in Note 4 of clause 1(a) of Foreign Indian Students to MBBS Course, at page 11 thereof, is only referable to patriarch descendants and not to matriarch descendants, this cannot be accepted especially when there is no such qualification mentioned in Note 4. The term simply used is 'grand parents' which would include maternal and paternal grandparents. If this assertion of the respondent is to be accepted, it would amount to violation of Article 14 of the Constitution of India. Therefore, the contention that the petitioner is real maternal grandson and, thus, is not entitled to admission in MBBS Course, as he is not eligible, cannot be accepted.

Objection has been raised by the respondents that the necessary parties are not impleaded, who had issued Residents Certificates to respondents No.3 and 4 especially when the validity of these certificates are being challenged and there being disputed questions of fact, which cannot be resolved in exercise of the writ jurisdiction, this objection would have been accepted in case this Court would have delved into the assertions and counter-assertions made by the parties with regard to the validity of the said documents. But in the light of the admitted facts which have direct bearing

on the decision of the present case, this objection will not be carrying any force. Controversy on the basis of these admitted facts can be resolved.

The basic question which needs to be looked into is whether respondents No.3 and 4 fulfill the requirement as laid down in Central Admission Brochure and especially the Foreign Indian Students (NRI Seats) and Note 4 as provided at page 11 of the Brochure. Under the heading 'Reservation of Seats', Sub-heading 'Foreign Indian Students (NRI seats)' which deal with MBBS reads as follows:-

Foreign Indian Students (NRI) Seats: -

- i) MBBS: NRI Candidates may apply for admission on the application form available at Appendix – E of the brochure (Page 15).

Under the NRI Category 03 seats shall be filled up as per preference order given as under:-

- a) First preference will be given to those NRI candidates who have ancestral background of Chandigarh (refer Note-4 below).
- b) Second preference will be given to those NRI candidates who have ancestral background of States/UTs other than U.T. Chandigarh.
- c) The Candidate against NRI seats will be admitted on the basis of merit determined by the marks obtained in Physics, Chemistry & Biology (PCB) in the qualifying examination. Eligibility & equivalence of these candidates is to be determined by the Panjab University, Chandigarh on the basis of qualifying examination equivalent to 10+2 examinations of PSEB/CBSE/ICSE. They are not required to appear in CET 2012. In case a seat under the NRI category remains vacant, the same shall be filled from General category candidates as per merit of CET.

Note-1 If sufficient number of candidates under 1st category are eligible and available then they will be admitted first even if students under subsequent category are higher in merit.

Note-2 The NRI students will have to give a bank guarantee within one month for the balance fee, if they opt to pay fee in installments as enumerated on page no. 5 instead of paying in lumpsum i.e. US\$ 75000.

Note-3 The relevant provisions of this brochure are liable to change as per the directions of the Fee Committee & Admission Committees constituted in light of directions of Apex Court in the case of TMA Pai Foundation V/s State of Karnataka, Islamic Academy of Education V/s State of Karnataka.

Note-4 For ancestral background of Chandigarh, the grandparents/parents of the candidates should be resident of Chandigarh for a minimum period of 5 years at anytime since the origin of Chandigarh and should have immovable property in his/her name in Chandigarh for the last at least 5 years. A certificate to this effect is required from DC-cum-Estate Officer or Municipal Corporation of Chandigarh. A similar certificate from competent authority is to be submitted in case of students with ancestral background of other states/UTs.”

It is not in dispute that the petitioner as well as respondents No.3 and 4 are claiming their right under clause (a), according to which, first preference will be given to those NRI candidates who have ancestral background of Chandigarh which is provided in Note 4. Under this note, the eligibility criteria for determining the ancestral background of Chandigarh has been laid down, according to which, the grandparents/parents of the candidates should be residents of Chandigarh for a minimum period of 5 years at any time since the origin of the

Chandigarh. This is the first condition and with this there is second condition also which is also to be fulfilled i.e. they should have immovable property in his/her name in Chandigarh for the last at least 5 years. A certificate to this effect is required to be issued from the Deputy Commissioner, Estate Officer or the Municipal Corporation of Chandigarh.

As regards respondent No.4, the only objection pressed into service at the time of hearing by the counsel for the petitioner is that he does not fulfil the second condition i.e. his father does not own immovable property in his name in Chandigarh for the last 5 years prior to the last date of receipt of applications i.e. 22.6.2012. This objection of the petitioner cannot be accepted in the light of the admitted fact that Smt.Kuljit Kaur, paternal grandmother of respondent No.4 purchased House No.800/1, Jattanwala Mohalla, Mani Majra, Chandigarh on 1.2.2006. This house was transferred in the name of Rajender Singh Brar, father of respondent No.4, through a deed of transfer (under blood relationship) on 19.9.2007. The property, thus, remained within the family and had not been transferred outside the family. Note 4 deals with ancestral background of a candidate. Expressions grandparents and parents have been used together, one does not exclude the other and, therefore, they have to be read in conjunction with each one complementing the other. Since the property remained within the family from 1.2.2006 till date, it cannot be said that the requirement of Note 4 is not fulfilled in the case of respondent No.3. It is not in dispute that respondent No.4 as also his parents are Non-Resident Indians and father of respondent No.4 being an overseas citizen of India has been issued an overseas citizen of India card. If that be so, the admission of respondent No.4 is in accordance with law and does not call for any interference by this

Court.

As regards respondent No.3, the basic thing which goes against her candidature is that neither she herself nor her father are Non-Resident Indians. They may be Canadian citizens but in the light of the fact that they have been staying in India for most of the last seven years, they cannot be termed as Non-Resident Indians. Although, the term 'Non-Resident Indian' has not been defined in the Brochure but as the same itself suggests it would mean an Indian who is normally not a resident of India. As is apparent from the details attached with the reply filed by respondent No.3 herself i.e. Annexures R3/2 and R3/3, which are statements showing the period for which Sh.Gurcharan Singh, father of respondent No.3, visited Canada during the period 1.6.2005 to 14.6.2012. Relevant extract of these Annexures read as follows:-

Date/stamp of departure from Delhi Indira Gandhi Airport	Date/stamp of arrival at Indira Gandhi Airport
01/06/05	27.7.2005
10/12/05	21.12.2005
08/06/06	12/07/06
18/6/2007	18/7/2007
22/12/2007	31/12/2007
26/5/2008	04/07/08
01/06/09	02/07/09
13/6/2010	04/07/10
11/06/11	01/07/11
19/5/2012	14/6/2012

A perusal of the above would show that he had hardly gone out of the country and had stayed back in India for 10 or more months per year. He, therefore, cannot be termed as a Non-Resident Indian. Further in the written statement filed by this respondent, it has been stated that her father

Shri Gurcharan Singh being the Financial Director and mother Smt. Gurpal Kaur, Manager (Administration) in Chatha Food Limited, Derabassi, are gainfully employed, have to attend to their respective jobs from 8.00 A.M. till late hours of the day, this proves that they are primarily working and residing in India. As per admission made by respondent No.3, she had passed her 10+1 and 10+2 from Saint Soldier School, Dhakoli, therefore, she also has been resident of India. An effort has been made to come out of this handicap of they being not Non-Resident Indians by taking shelter under Section 7(A) of the Citizenship Act, 1955 (for short 'the 1955 Act') when an objection was raised by the petitioner that neither respondent No.3 nor her parents have got registered themselves with the FRRO which is mandated requirement for non-citizens of the country, by submitting that under the Overseas Citizenship of India Scheme notified under the 1955 Act, they are not required to be registered with the FRRO.

Section 7 (A) of the said Act now requires to be seen and the same reads as follows:-

[7A. Registration of overseas citizens of India.-

(1) The Central Government may, subject to such conditions and restrictions as may be prescribed, on an application made in this behalf, register as an overseas citizen of India-

- (a)** any person of full age and capacity,-
 - (i)** who is citizen of another country, but was a citizen of India at the time of, or at any time after, the commencement of the Constitution; or
 - (ii)** who is citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the

Constitution;or

- (iii) who is citizen of another country, but belonged to a territory that become part of India after the 15th day of August, 1947; or
- (iv) who is a child or a grand-child of such a citizen; or
- (b) a person, who is a minor child of a person mentioned in clause (a):

Provided that no person, who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an overseas citizen of India].

The Notification No.SO 542 (E) dated 11.04.2005 issued under Section 7(A) of the 1955 Act on which reliance has been placed reads as follows:-

“In exercise of the powers conferred by sub-section (I) of Section 7-B of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby specifies the following rights to which the persons registered as Overseas Citizens of India under Section 7-A of the said Act shall be entitled, namely:-

- (a) Grant of multiple entry lifelong visa for visiting India for any purpose;
 - (b) Exemption from registration with Foreign Regional Registration Officer or Foreign Registration Officer for any length of stay in India;
- and

(c) Parity with Non-Resident Indians in respect of all facilities available to them in economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties.”

Section 2 (ee) of the 1955 Act which deals with and defines “overseas citizen of India” reads as follows:-

“2 [(ee) “overseas citizen of India” means a person registered as an overseas citizen of India by the Central Government under section 7A;]

In the light of the above, a person can take benefit of Section 7 (A) of the 1955 Act only when he is a person registered as an overseas citizen of India which admittedly respondent No.3 or her father Gurcharan Singh are not. Since they have not been registered as an overseas citizen of India under Section 7(A) of the 1955 Act, no benefit can be claimed by them under the notification dated 11.4.2005 on which reliance has been placed for claiming treatment at par with Non-Resident Indians.

In view of the above, it cannot be said that either respondent No.3 or her father through whom she is claiming to be a Non-Resident Indian are, as a matter of fact, Non-Resident Indians. They are citizens of Canada and residing in India without registering themselves with the FRRO and as is apparent from the details of visits made by the father of respondent No.3 to Canada as reproduced above, as extracted from her own documents Annexures R-3/2 and R-3/3, he is an occasional visitor to Canada for short periods and for most of the time, he had been residing in India for the last seven years. With the basic requirement for being a Non-Resident Indian

not fulfilled, the claim and admission granted to respondent No.3 against a seat reserved for the Foreign Indian Students (NRI Seats) cannot be sustained. Accordingly, admission granted to respondent No.3 against the reserved NRI seats being not in accordance with law deserves to be set aside.

In view of the above, admission of respondent No.4-Gurpal Singh Brar is upheld, however, admission of respondent No.3-Ms.Arunjeet Goshal to MBBS Course at Government Medical College and Hospital, Sector 32, Chandigarh, against the Foreign Indian Students (NRI seats) is hereby quashed. A direction is issued to respondent No.2 to fill up the seat which has fallen vacant as per the merit list in accordance with law.

Writ petition is partly allowed accordingly.

Copy of this order be given **Dasti**, under the signatures of the Special Secretary of the Bench, to the counsel for the parties.

September 29th, 2012
sjks/pj/poonam

(AUGUSTINE GEORGE MASIH)
JUDGE