

VIA VIDEO CONFERENCING

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

Reserved on:- 11.02.2022
Date of Decision:- 15.02.2022.

+ W.P.(C) 992/2022 & CM APPL. 3420/2022 (stay)

DR VISHAL DAHIYA AND ORS Petitioners

Through Mr. Krishnan Venugopal, Sr. Adv.
with Mr. Shivendra Singh, Mr. Gaurav
Ray, Mr. Kaushik Mishra and Ms.
Pallavi Srivastava, Advs.

versus

THE MEDICAL COUNSELLING COMMITTEE
MCC & ANR. Respondents

Through Mr. Kirtiman Singh, Mr. Waize Ali
Noor, Mr. Syed Hussain Taqvi, Ms.
Srirupa Nag, Advs. for R-1
Ms. Anita Sahani, Adv. for R-2
Dr. Charu Mathur, Adv. for interveners

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. The Petitioners who are candidates falling in the Delhi OBC list have approached this Court under Article 226 of the Constitution of India, assailing the notice dated 10.01.2022, issued by the Medical Counselling Committee (hereinafter referred to as 'the MCC'), whereby OBC reservation

criteria has been modified with regard to Institutional Preference Seats in the Central Institutes.

2. The MCC, which is respondent no.1, is an organization under the Directorate General of Health Services (hereinafter referred to as 'DGHS'). The MCC is responsible for online allotment of seats for undergraduate, postgraduate and super-specialty medical and dental courses in government-run/aided colleges and deemed-to-be-university colleges on the basis of the candidates' score in the National Eligibility cum Entrance Test (hereinafter referred to as 'NEET'). The factors which are considered during allotment are merit, reservation eligibility and the preference list submitted by the candidates. Guru Gobind Singh Indraprastha University (hereinafter referred to as 'GGSIPU'), formerly known as 'Indraprastha University', which is a state teaching-cum-affiliating university, located in the NCT has been arrayed as respondent no. 2 in the present petition.

3. On 23.02.2021, the National Board of Examination in Medical Sciences (hereinafter referred to as 'NBEMS'), which is an autonomous body under the Ministry of Health and Family Welfare (hereinafter referred to as 'MoHFW) established with the objective of standardizing postgraduate medical education and examination in India, published the NEET-PG, 2021 bulletin outlining the schedule and criteria for the common entrance exam, based on which the counselling for admission to medical colleges takes place all over the country. Thereafter, the respondent no.2/University issued its General Admission Brochure (hereinafter referred to as 'the brochure') on 10.06.2021, wherein it laid down the criteria for reservation in the OBC category, a detailed reference whereto will be made at a later stage in the judgment.

4. Thereafter, on 29.07.2021, a circular was issued by the DGHS, wherein it was provided that there would be 27% of reservation for OBCs (non-creamy layer) and 10% reservation for EWS in the 15% undergraduate and 50% postgraduate seats in the All India Quota (hereinafter referred to as 'AIQ') for the academic year 2021-22. This notification was challenged before the Apex Court by way of a writ petition titled "*Neil Aurelio Nunes and others v. Union of India and others*" W.P.(C) 961/2021, wherein the Apex Court passed its preliminary interim order on 07.01.2022, permitting the counselling for the NEET-PG 2021 to commence forthwith.

5. The NEET-PG Exam, which was initially to be held in April, 2021 was, however, postponed due to an upsurge in Covid-19 cases, and was subsequently, held on 11.09.2021, the results whereof were declared on 28.09.2021. Soon after the declaration of the results, the MCC on 03.10.2021, published its Information Bulletin for the counselling to be held for admissions to the PG medical courses.

6. It is the petitioners' case that both, under the brochure issued by respondent no.2 on 10.06.2021, and the Information Bulletin issued by the MCC on 03.10.2021, they, as OBC candidates in terms of the list maintained by the Govt. of NCT of Delhi, were eligible for admission against the OBC seats in the 50% institutional preference seats.

7. Pursuant to the interim order dated 07.01.2022 passed by the Apex Court in *Neil Aurelio Nunes (supra)*, the respondent no. 1 on 10.01.2022 notified the time schedule for counselling. As per this notice, the registration and payment by candidates for counselling was to commence on 12.01.2022. For the sake of convenience, the relevant extract of the counselling schedule reads as under:-

SCHEDULE FOR ONLINE PG COUNSELING (MD/ MS/ DIPLOMA/ PG DNB Courses) FOR NEET 50% AIQ/ 100% DEEMED/CENTRAL UNIVERSITIES/AFMS (only Registration Part) and 100% PG DNB SEATS FOR THE ACADEMIC YEAR 2021

1 st Round							
SL No.	Verification of Seat Matrix by Institutes	Registration/ Payment	Choice Filling/ Locking	Verification of Internal Candidates by the respective Universities/ Institutes	Processing of Seat Allotment	Result	Reporting
1.	7th January, 2022 to 10th January, 2022	12th January, 2022 to 17th January, 2022 up to 12:00 NOON (as per Server Time) Payment facility will be available up to 03:00 PM of 17th January,2022 as per Server Time	Choice Filling :13th January to 17th January, 2022 (up to 11:55 PM) as per Server Time Choice Locking from 04:00 PM of 17.01.2022 to 11:55 PM of 17.01.2022 as per Server Time	18th January, 2022 to 19th January, 2022	20th January, 2022 to 21st January, 2022	22nd January, 2022	23rd January, 2022 to 28th January, 2022
		(6-Days)	(5-Days)	(2-Days)	(2-Days)	(1-Day)	(06-Days)
2 nd Round							
2.	1st February, 2022 to	3rd February, 2022 to 7th February, 2022 upto 12:00	Choice Filling : 4th February, 2022 to	8th February, 2022 to 9th February, 2022	10th February, 2022 to 11th February, 2022	12th February, 2022	13th February, 2022 to 19th February, 2022

	2nd February, 2022	NOON as per Server Time * Payment facility will be available up to 03:00 PM of 7th February, 2022 as per Server Time	7th February, 2022 (till 11:55 PM) as per Server Time Choice Locking from 04:00 PM to 11:55 PM of 7th February, 2022, as per Server Time				
		(5-Days)	(4-Days)	(2-Days)	(2-Days)	(1-Days)	(07-Days)
MOP-UP ROUND FOR ALL INDIA QUOTA/DEEMED AND CENTRAL UNIVERSITY SEATS/PG DNB SEATS							
SL. No.	Verification of Seat Matrix by Institutes	Registration/ Payment	Choice Filling/ Locking	Verification of Internal Candidates by the respective Universities/ Institutes	Processing of Seat Allotment	Result	Reporting
3.	22nd February, 2022 to 23rd February, 2022	24th February, 2022 to 28th February, 2022 (12:00 NOON as per Server Time) * Payment facility will be up to 03:00 PM	Choice Filling : 25th February, 2022 to 28th February, 2022 (11:55 P.M as per Server	1st March, 2022 to 2nd March, 2022	3rd March, 2022 to 4th March, 2022	5th March, 2022	6th March, 2022 to 10th March, 2022

Signature Not Verified

Signed By: GARIMA MADAN
Location:
Signing Date: 17.02.2022
15:27:42

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		of 28th February, 2022 as per Server Time	Time) Choice Locking from 04:00 PM to 11:55 PM on 28th February, 2022 as per Server Time				
		(5-Days)	(5-Days)	(2-Days)	(2-Days)	(1-Day)	(05-Days)

8. On the same date, the respondent no.1 posted another notice on its website titled “*Salient points regarding changes in PG 2021*”, wherein the differences in the counselling and the admission guidelines for the NEET-PG 2021 vis-a-vis the NEET-PG 2020 were notified. The relevant extract thereof reads as under:

"Urgent Attention Candidates/Institutions of NEET-PG:

The Counselling for NEET-PG is scheduled to commence from 12/01/2022. However, the following changes/modifications in the counselling scheme will be implemented from the academic year 2021-22:

S. No.	NEET-PG Counselling up to 2020	NEET-PG Counselling 2021 Onwards
1.	<p>2 rounds of AIQ counselling</p> <ul style="list-style-type: none"> • AIQ Round 1 • AIQ Round 2 <p><i>Seats reverted back to the respective States after completion of round 2 of AIQ.</i></p>	<p>4 rounds of AIQ counselling</p> <ul style="list-style-type: none"> • AIQ Round 1 • AIQ Round 2 • AIQ Mop-up Round • AIQ Stray Vacancy Round

		<p>No seat will be reverted back to the respective States after completion of round 2 of AIQ.</p>
2.	<p>Unfilled NRI/Muslim Minority/Jain Minority seats are reverted to the Deemed Universities after completion of Mop-Up Round for conduction of Stray Vacancy Round by Deemed Universities.</p>	<p>Unfilled NRI/Muslim Minority/Jain Minority seats to be converted to Indian National seats after exhaustion of all the eligible NRI/Muslim Minority/Jain Minority Candidates during the Mop-Up Round before reverting it back to the respective Deemed University.</p>
3.	<p>Reservation Policy of AIQ:</p> <ul style="list-style-type: none"> • S.C.- 15% • S.T.- 7.5% • O.B.C.- (Non-Creamy Layer) <p>as per the Central OBC list- 27% (Only in Central Institutes/ University)</p> <ul style="list-style-type: none"> • EWS- as per Central Government norms- 10% (Only in Central Institutes/University) • PwD- Horizontal Reservation as per NMC norms- 5% 	<p>Reservation Policy of AIQ for</p> <p>Central Institutes/University as well as State contributed seats:</p> <ul style="list-style-type: none"> • S.C.- 15% • S.T.- 7.5% • O.B.C.- (Non-Creamy Layer) as per the Central OBC list- 27% • EWS- as per Central Government norms- 10% • PwD- Horizontal Reservation as per NMC norms- 5%

9. It is the common case of the parties that a revised counselling Information Bulletin was issued by the respondent no. 1 on the same date, i.e., 10.01.2022. This bulletin was however, followed by yet another revised bulletin, issued by respondent no. 1 on 12.01.2022. On both of these occasions, not only was the clause dealing with the reservation policy for central institutes including Vardhaman Mahavir Medical College & Safdarjung Hospital, Atal Bihari Vajpayee IMS & RML, ESIC Basaidarapur changed, but, the answer to FAQ No. 50 was also changed in the revised bulletin issued on 12.01.2022. As per this policy, OBC reservation for PG against institutional preference seats was now restricted only to candidates in the central OBC list. Consequently, candidates like the petitioners who were falling in the Delhi OBC list were excluded from being considered for these reserved seats. This was in contradiction to the policy followed in NEET-PG 2020 when candidates in Delhi OBC were eligible for admission in the institutional preference seats.

10. Aggrieved by this exclusion, the petitioners approached this Court on 14.01.2022, on which date, the matter was adjourned to 17.01.2022. On the said date, this Court was informed that in view of the clarification issued on 10.01.2022 as also the fact that the choice filling by the candidates was to begin on 13.01.2022, a notice had been issued on 15.01.2022 providing an option to the candidates to change their category to unreserved from SC/ST/OBC/EWS/PwD, so as to enable them to participate as an unreserved candidate in the counselling process. This option was open till 18.01.2022. It has been jointly submitted by the parties that the petitioners have exercised this option, and already participated in the first round of counselling as unreserved candidates. As per the respondents, about 1200 candidates have changed their category and many of them, including some of the petitioners

herein, have been allotted seats in postgraduate courses, where they have already joined.

11. The petitioners' challenge to the impugned notification dated 10.01.2022 is primarily based on two grounds, the first being, that the respondent no.1 has changed the '*rules of the game*' after the commencement of the counselling and that too, just before when the candidates were required to fill their choices on 13.01.2022. The second being that the medical colleges in question, i.e., VMMC and ABVIMS are not central educational institutions within the meaning of section 2 (d) of the Central Educational Institutions (Reservation in Admissions) Act, 2007 (hereinafter referred to as 'CEI Act') and, therefore, the MCC has no authority in law to deprive the Delhi OBC candidates of their right to be considered under the Delhi OBC quota against the 50% institutional preference seats of respondent no.2/University.

12. In support of the petition, learned senior counsel for the petitioners, Mr. Venugopal submits, that, since it is an admitted position that the amendment in FAQ No. 50, which provided that only candidates from the Central OBC List would be eligible to apply for the seats in the OBC category, was published only a day before the counselling process was scheduled to commence, the Delhi OBC candidates were left in the lurch and it was evident that the '*rules of the game*' had been changed after the game had already begun'.

13. He contends that the General Admissions Brochure issued by the respondent no.2 and the 'Information Bulletin and Counselling Scheme', is a document of importance, which is extremely vital for the prospective students to take decisions regarding the applications, was first published in October 2021. Thereafter, the petitioners herein, decided to apply under the OBC

category seats, and until 12.01.2022, the petitioners had no reason to believe that there would be any change in the admission policy, especially at this stage of the counselling process. A policy decision such as this, which was likely to impact a large number of OBC candidates, ought to have been taken well in advance and widely published so that the candidates would not be caught off-guard and would have been in the position to take appropriate action in order to give themselves the best chance of succeeding. As it is, the petitioners were under the impression that they will be able to register for GGSIPU's institutional quota seats as Delhi OBC candidates. He claims that this issue is squarely covered by the decision of this Court in **Ankita Chaudhary v. GGSIPU** 2016 SCC OnLine Del 3025, wherein, while dealing with a similar issue, concerning a policy issued at variance with the policy for the earlier academic session after the commencement of the admission process, it was held that the action of the university amounted to changing 'the rules of the game' after the game had already begun. He further submits that like the present case, the change was introduced just before the commencement of counselling, which the Court held was not permissible.

14. He further submits that this approach has been denounced by this Court as well as by the Apex Court in a plethora of judgements and therefore, cannot be countenanced. In support of this plea, he relies on a decision in the case of "**Maharashtra State Road Transport Corporation and others. V. Rajendra Bhimrao Mandve and others**", (2001) 10 SCC 51, wherein, the Apex Court held that the 'rules of the game', i.e., the criteria for selection cannot be altered by the authorities in the middle or after the process of selection has already commenced. He also places reliance on "**K. Manjusree v. State of A.P. and Ors.**" (2008) 3 SCC 512 and on "**Hemani Malhotra v. High Court of Delhi**" (2008) 7 SCC 11, wherein, this Court reiterated that

changing the rules of the game after the game has already begun, is unacceptable.

15. Mr. Venugopal then submits that the two institutes in question, i.e., VMMC and ABVIMS, which are claimed to be central institutes are, in fact, State institutes, in respect whereof the respondent no.1 had no authority to tinker with the reservation policy of the respondent no.2/University to which the institutions in question are affiliated. He submits that the central educational institutes have been defined under Section 2(d) of the Central Educational Institution (Reservation in Admission) Act, 2006 and none of these institutes fulfil the criteria prescribed therein.

16. He submits that the two institutes - VMMC and ABVIMS being affiliated to the GGSIPU, which is a State University, would, therefore, fall under the category of State institutes. The candidates in the Delhi OBC list would, therefore, be entitled to be considered against the institutional preference seats and were always being extended this benefit, which has now been sought to be arbitrarily withdrawn. He submits that the very purpose of a State OBC list is to grant benefit of OBC reservation to candidates in the institutes in the State, but the respondent no.1 erroneously treating these institutions as Central educational institutes, is wrongly restricting the benefit of OBC reservation in the State institutional seats only to the candidates in the Central OBC List.

17. By placing reliance on the decision of the Apex Court in "*Jaishri Laxmanrao Pattil v. Chief Minister, State of Maharashtra*" (2021) 8 SCC 1, he submits that the 105th amendment to the Constitution amending Article 342A of the Constitution of India was introduced with the objective of strengthening the federal structure of the country. This now enables the state governments to have different OBC lists, which cannot be permitted to be

superseded or replaced by the central OBC list. He therefore contends that the Delhi OBC list has to be respected and ought to be applied to institutions affiliated with the state university.

18. Reliance is also placed on a decision of this Court in "**Ram Awtar Manda & Ors v. Guru Gobind Singh Indraprastha University & Ors**", 2013 SCC OnLine Del 2368 wherein it was held that the medical colleges affiliated to the respondent no.2/GGSIPU are not 'Central Educational Institutions' within the meaning of the section 2(d) of the CEI Act, 2006. Reliance is also placed on a decision of the Division Bench of the Bombay High Court in "**V. Anto v. Union of India and another 2009 SCC**" OnLine Bom 1268 wherein it was held that a medical college affiliated to the Maharashtra University of Health Science could not be treated as central educational institution within the meaning of section 2(d) of the CEI Act, 2006. He therefore, prays that the impugned notice be quashed and the petitioners be permitted to participate as OBC category candidates at least in the second round of counselling, which is still ongoing.

19. On the other hand, Mr. Kirtiman Singh, learned counsel for the respondent no.1, opposes the writ petition by submitting at the outset that the respondent no.1 is conducting counselling for approximately 27 central institutes, wherein the central list of OBC (non-creamy layer) is followed. Both VMMC and ABVIMS are central funded and aided institutes in central government hospitals and therefore, in order to bring uniformity in the counselling process, it was decided that the same criteria of adopting the central OBC list as is being followed in other central institutes should be adopted. He submits that central OBC list is already being used for admissions in Under Graduate course since NEET-UG 2020 itself and,

therefore, there is no reason the same should not be followed for the PG admissions.

20. While responding to the first issue raised by the petitioners, he submits that the petitioner's plea being that the rules of the game had been changed by the respondents after the game had already begun, is based on a wholly erroneous premise. Once the petitioners themselves are placing reliance on the GGSIPU General Admissions Brochure published on 10.06.2021, clause 6.1.4 whereof clearly mentions that the OBC reservation policy was not applicable in Master's and Post Graduate Diploma courses, they cannot now claim that they should be granted any reservation on the basis of the Delhi OBC list. In fact, as per the brochure issued by the respondent no.2, there was no OBC reservation in the PG and, therefore, merely because in the last two years, reservation to the candidates in the Delhi OBC list had been granted cannot be a ground to overlook this specific provision in clause 6.1.4, which categorically states that the OBC reservation policy will not be applicable to PG courses. His contention, thus, is that once the OBC reservation policy is itself not applicable to PG courses, the petitioners cannot be permitted to selectively rely on the guidelines for OBC seats in GGSIPU quota or State quota as envisaged under clause 7.2 of the brochure, wherein reference has been made to Delhi OBC lists.

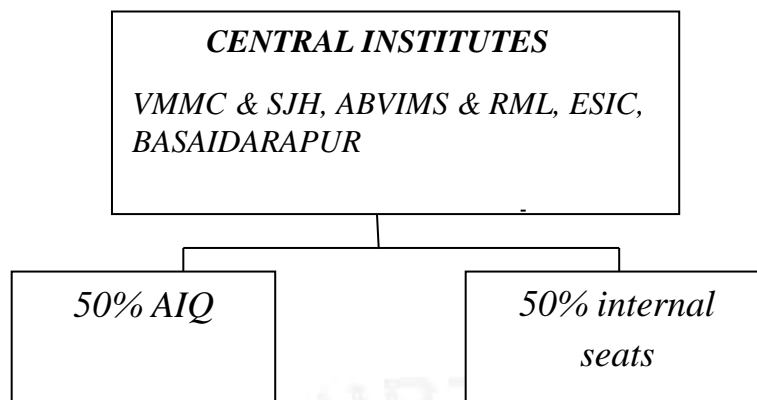
21. He, further, submits that the information bulletin issued by respondent no.1 on 03.10.2021 in itself made it clear that both VMMC and ABVIMS are central institutes and, therefore, the OBC seats in the said institute will be filled as per the central government list. Merely because there was an inadvertent error on the part of the respondent no.1 qua answer to Q. No.50 in the FAQs, which has now been corrected cannot entitle the petitioners to now

urge that they were under an impression that the OBC candidates in the Delhi OBC list will also be entitled to reservation in these central institutes.

22. By drawing my attention to paragraph 7.2 of the General Admissions Brochure issued by the respondent no.2/GGSIPU, he submits that the same clearly mentions that out of the total seats available for admissions, 50% seats would be reserved for the All India Quota, to be filled up on the basis of All India Entrance Test conducted by an institution on behalf of the DGHS, Government of India and the other 50% would be reserved for MBBS graduates of GGSIPU. The same paragraph further clarifies that what was earlier referred to as 'State Quota' would now be referred to as 'GGSIPU Quota' and therefore it was apparent that the Delhi OBC list would no longer be relevant as it was no longer a state quota but an institutional quota. He, thus, contends, that the brochure was clear on the subject of OBC reservations in the central institutes and a careful reading of the same leaves no manner of doubt that the prospective candidates were privy to the change in scheme over six months ago. The petitioners cannot not be allowed to claim that the notice dated 12.01.2022 is the first time they have learnt of the change in the PG OBC reservation policy by the respondent no.1. He, thus, contends that the petitioners' plea that the rules of the game have been changed at the last minute is wholly meritless and, therefore prays that the decisions relied upon by the petitioners will not be applicable to the facts of the case.

23. Mr. Singh, further places reliance on clause 6.6 of the Information Bulletin and Counselling Scheme issued by the MCC in the first week of October, 2021 to urge that the policy and scheme for admission was mentioned in clear terms in the bulletin. Clause 6.6 thereof reads as under:

“6.6 CENTRAL INSTITUTES- VMMC & SJH, ABVIMS & RML, ESIC, BASAIDARAPUR



50% Seats will be contributed by the Central Institutes (VMMC & SJH, ABVIMS & RML, ESIC, Basaidarapur) to All India Quota. For the remaining 50% seats, candidates who have completed their MBBS/BDS from I.P. University (VMMC & SJH; ABVIMS & RML; Dr. Baba Saheb Ambedkar Medical College & Hospital, New Delhi; Army College of Medical Sciences, Delhi; North Delhi Municipal Corporation (Medical College) Hindu Rao Hospital) are eligible for Internal seats of 50% in Central Institutes (VMMC & SJH, ABVIMS & RML, ESIC, Basaidarapur).

Reservation Policy:

- ❖ The reservation policy of the Central Government is followed:
 - S.C. – 15 %
 - S.T. – 7.5 %
 - O.B.C.- (Non-Creamy Layer) as per the Central OBC list- 27%
 - EWS- as per Central Government norms- 10%
 - PwD- Horizontal Reservation as per NMC norms- 5%

- ❖ Reservation of seats under PWD Category has been increased from 3% to 5% in AIQ and the 21 Benchmark Disabilities as envisaged under the regulations of Rights of Persons with Disabilities Act 2016 and as per NMC norms. For range of disabilities included, please see Annexure 'I'.

- ❖ *Candidates who want to avail 5% PwD reservation in PG seats of Govt. /Central medical institutions should obtain Disability certificate as per 21 Benchmark Disabilities given under RPWD Act 2016, from the designated disability centres as per the list enclosed as ANNEXURE 2. The certificate issued by any other hospital/ board will not be accepted.”*

24. He further submits that the admissions on the basis of the Delhi OBC list will necessarily amount to reservation on the basis of the domicile of the candidates, which is not permissible in terms of the decision of the Apex Court in *Dr. Pradeep Jain v Union of India 1984 (3) SCC 654* followed by the decision in *Nikhil Himtahni v. State of Uttrakhand & Ors.* even though the issue as to whether resident/domicile based reservation is permissible has been referred to a larger bench in *Dr. Tanvi Behl v. Shrey Goel and Ors. 2020 13 SCC 675* the legal position, as on date, is that no such reservation is permissible.

25. In response to the second issue raised by the petitioners, Mr. Singh by drawing my attention to paragraph 6.6 of the Information Bulletin and Counselling Scheme issued by the MCC, submits that right from 03.10.2021, when the brochure was issued, all candidates were aware that the VMMC and ABVIMS are central institutes, where the central OBC list will be applicable. He submits that once these institutes are fully funded by the central government, they would qualify as central educational institutes in terms of Section 2(d)(iv) of the CEI Act, 2006. Without prejudice to his submission that the two institutes are central education institutes, he submits, that even otherwise once the institutes are completely governed and funded by the central government, it is open for the central government to apply the central OBC list to these institutes. The petitioners' plea that the central government derives its power to provide for reservation and the manner in which it should be provided only under the CEI Act, 2006 is wholly misplaced. By placing

reliance on the observations of the Apex Court in paras 30 to 51 of *Neil Aurelio Nunes(supra)*, he submits that the central government has the power to provide for reservation in terms of the Articles 14, 15 & 16 of the Constitution of India.

26. He further contends that it is not as if the petitioners have become ineligible on account of this clarification as they were already granted an opportunity to change their category from OBC to unreserved, which opportunity they have all availed successfully. He, therefore, prays that in the light of his submissions, the present writ petition be dismissed.

27. In support of the stand taken by the respondent no.1/MCC, learned counsel for respondent no.2, Ms. Anita Sahni, and Dr. Charu Mathur, learned counsel for the interveners, jointly submit that they agree with the stand taken by the respondent no. 1/MCC, insofar as it relates to the applicability of the reservation policy, that there has been no last minute change in the Admission and Counselling Bulletin as the same has been made in accordance with the General Admissions Brochure issued by the respondent no.2/GGSIPU. Dr. Mathur, who is representing the candidates from the Central OBC list, further submits that the writ petition be dismissed in view of the fact that the relief sought in the present petition is akin to demanding preferential treatment towards the candidates from the Delhi OBC list.

28. Having considered the submissions of the parties and perused the record, it would be appropriate to, at the outset, note the impugned notice dated 10.01.2022, published on the MCC website on 12.01.2022, whereby the respondents have clarified the NEET-PG Counselling Scheme 2021. The same reads as under:-

NOTICE

Urgent Attention Candidates/Institutions of NEET-PG:

The Counselling for NEET-PG is scheduled to commence from 12/01/2022. However, the following changes/modifications in the counselling scheme will be implemented from the academic year 2021-22:

<u>S.N</u> <u>o.</u>	<u>NEET-PG Counselling up to 2020</u>	<u>NEET-PG Counselling 2021 onwards</u>
1.	2 rounds of AIQ counselling <ul style="list-style-type: none"> • AIQ Round 1 • AIQ Round 2 Seats reverted back to the respective States after completion of round 2 of AIQ.	4 rounds of AIQ counselling <ul style="list-style-type: none"> •AIQ Round 1 •AIQ Round 2 •AIQ Mop-up Round •AIQ Stray Vacancy Round No seat will be reverted back to the respective States after completion of round 2 of AIQ.
2.	Unfilled NRI/Muslim Minority/Jain Minority seats are reverted to the Deemed Universities after completion of Mop-Up Round for conduction of Stray Vacancy Round by Deemed Universities.	Unfilled NRI/Muslim Minority/Jain Minority seats to be converted to Indian National seats after exhaustion of all the eligible NRI/Muslim Minority/Jain Minority Candidates during the Mop-Up Round before reverting it back to the respective Deemed University.
3.	Reservation Policy of AIQ: ➤ S.C.- 15%	Reservation Policy of AIQ for Central Institutes/University as

<ul style="list-style-type: none"> ➤ S.T.- 7.5% ➤ O.B.C.- (Non-Creamy Layer) as per the Central OBC list- 27% (Only in Central Institutes/University) ➤ EWS- as per Central Government norms- 10% (Only in Central Institutes/University) ➤ PwD- Horizontal Reservation as per NMC norms- 5% 	<p>well as State contributed seats:</p> <ul style="list-style-type: none"> ➤ S.C.- 15% ➤ S.T.- 7.5% ➤ O.B.C.- (Non-Creamy Layer) as per the Central OBC list- 27% ➤ EWS- as per Central Government norms- 10% ➤ PwD- Horizontal Reservation as per NMC norms- 5%
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29. As noted hereinabove, the first and foremost grievance of the petitioners is that the respondents have, at the last minute, "*changed the rules of the game*", thereby excluding them from being considered against the OBC reservation even in the 'Institutional Preference Quota' seats. It has been urged that the bulletin issued by the respondent no. 1 on 03.10.2021, clearly provides in Clause No. 6.5.3 that eligibility for internal seats in Central Institutes (*VMMC & SJH, ABVIMS & RML, ESIC, Basaidarapur*) would be as per their admission brochure, which position remained unchanged when the brochure was amended on 10.01.2022. It was only in the evening of 12.01.2022, that this position was sought to be changed alongwith the answer to FAQ No.50. It has therefore, been contended that this last minute change of the eligibility criteria for availing the OBC reservation was impermissible, for which reliance has been placed on *Ankita Chaudhary* (supra).

30. The petitioners have also vehemently urged that once in terms of the clause 6.5.3 of the Bulletin issued by respondent no.1 on 03.10.2021, eligibility conditions were to be determined as per the admission brochure of

the institute, they were all along made to believe that as per past practice, OBC reservation against institutional seats in VMMC & SJH, ABVIMS & RML, ESIC, Basaidarapur would be as per the Delhi OBC list and not as per the Central OBC list, which was applicable only to AIQ seats. In order to appreciate this plea, it would be necessary to refer to Clause 6.1.4 of the said brochure which besides clarifying that the reservation in the OBC category was not applicable at the Masters and Post Graduate level, also provided that for central government institutions, OBC reservation would be as per the Central OBC List. The said Clause reads as under:-

“6.1.4 Other Backward Castes
27% seats are reserved for Delhi OBC Category belonging to the list of OBC castes in Delhi. The reservation will be available only in the University Schools of Studies and other Government Institutions. Students will be admitted in this category on the submission of a certificate to this effect from the Competent Authority of the Government of NCT of Delhi. Certificate issued by Govt. of India or any state government will not be accepted under any circumstances. The reservation for OBC Category is only for candidates who are from Delhi Region. A certificate issued by a Competent Authority of Delhi to an individual on the basis of Caste Certificate of his/her parents from another state will be accepted for claiming a seat under OBC Category if and only if the caste is in the list of notified OBC list by Govt. of NCT of Delhi. **Reservation in OBC Category is not applicable for Master's Level and Postgraduate Diploma programmes. The non-creamy layer certificate should be issued after 31st March, 2021. It is mandatory to submit the Non-Creamy Layer Certificate issued after 31st March 2021 for claiming Reservation against OBC Category.**

However for Central Government Institutions, seat allocation is on all India basis among the category of seats

including OBC and for such reservation the certificate issued should be as per the central list of OBC and the non-creamy layer certificate should be issued after 31st March, 2021.”

(emphasis supplied)

Reference may also be made to Clause 7.2 which provided that counselling to both AIQ and State quota would be by respondent no. 1 MCC. The said Clause reads as under:-

“7.2 PGMC (CET Code 102)

1. *The candidates must qualify NEET – PG for admissions to the Academic Session.*
2. *Out of total seats that shall be available for admissions, 50% seats are reserved for All India Quota, to be filled up on the basis of All India Entrance Test conducted by an institution on behalf of DGHS, Government of India.*
3. *The other 50% seats will be reserved for MBBS graduates of Guru Gobind Singh Indraprastha University. Reservation will be applicable in these seats as per policy of University as applicable from time to time for Scheduled Caste (SC), Scheduled Tribe (ST) and OBC candidates. For reservation to Physically Challenged (PWD) candidates, guidelines of Medical Council of India will be applicable. Earlier 50% quota was called 'State Quota', Since these 50% seats are exclusively for MBBS graduates of GGSIP University, hence these 50% seats will be termed as 'GGSIP University Quota' (State Quota).*
4. *Any change in reservation policy, if taken by the Government of India/NCT of Delhi or the University, the counselling will be conducted in accordance to that.*

5. Counselling for all the seats of State Quota & All India Quota shall be conducted by Medical counseling Committee, DGHS, Govt. of India, Delhi”

31. A perusal of the aforesaid Clause 6.1.4 from the Information Bulletin issued by respondent no. 2, shows that while it provided for 27% reservation for OBC candidates from the Delhi OBC list, it was made clear the same would be applicable only in University Schools of Studies & other Government Institutes. However, it is important to note that the class of Central Government Institutes was, placed in a different category; by specifically providing that for availing the OBC reservation in these institutes, the candidates should possess a certificate as per the Central OBC list. The bulletin issued by respondent no. 1 also categorically described VMMC & SJH, ABVIMS & RML, ESIC, Basaidarapur as Central Institutes which position, the petitioners never challenged. In this regard, reference may be made to FAQ no. 54, wherein this position was clarified, the same reads as under:

“Q. No. 54: What will be the eligibility criteria for 50% Institutional seats of Central Universities which is being conducted by DGHS?”

Ans: The eligibility conditions of the 50% Institutional Quota of the Central Universities will be as per the following eligibility criteria given by the respective institutions. For additional information please contact the concerned University.

<i>AMU</i>	<i>An Institutional (Internal) candidate is one who has passed the qualifying examination (MBBS/BDS as applicable) from This University and completes his/her internship between April 01, 2018 and March 31, 2021 (both days inclusive).</i>
<i>BHU</i>	<i>Only those Candidates who have passed BDS from Institute of Medical Sciences, BHU in December, 2019 (Supplementary Batch by</i>

	<p>31/03/2020) and have completed Compulsory rotary internship before 31/03/2021 will be considered for admission to MDS Course-2021 in IMS, BHU under Internal (Institutional) quota pool, provided the Candidates have appeared and qualified in NEET-PG 2021 Examination.</p> <p>Candidate who are already pursuing MDS course in IMS, BHU through Internal (Institutional) quota or passed BDS from Institute of Medical Sciences, BHU in earlier academic years (i.e. before 2019) are not eligible for admission to PG Course 2021 under BHU Internal (Institutional) quota.</p>
DU	<p>a) For Delhi University Quota: The candidate must have passed final M.B.B.S examination (for MD/MS/Diploma Course) and BDS examination (for MDS Course) from the University of Delhi and must have completed satisfactorily one-year compulsory rotating internship as on or before March, 31 of the Year of admission and must have submit their internship completion certificate at the time of admission.</p> <p>b) For All India Quota: The candidate must have passed final M.B.B.S examination (for MD/MS/Diploma Course) and BDS examination (for MDS Course) from the recognized Institution/University and must have completed satisfactorily one- year compulsory rotating internship as on or before March, 31 of the Year of admission and must submit their internship completion certificate at the time of admission.</p>
Central Institutes (VMMC & SJH, ABVIMS &	<p>The eligibility for Central Institutes will be as per their admission brochure. For more information please refer to their website.</p>

<i>RML, ESIC, Basaidarapur)</i>	
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Similarly, the brochure issued by the respondent no. 1 on 03.10.2021 also clearly described *VMMC & SJH, ABVIMS & RML, ESIC, Basaidarapur* as Central Institutes. This Brochure was also never assailed by the petitioners.

32. By drawing my attention to Section 2(d) of the CEI Act, 2006, Mr. Venugopal has vehemently urged that the *VMMC & SJH, ABVIMS & RML, ESIC, Basaidarapur* could, by no stretch of imagination, qualify as a Central Educational Institution, as despite receiving aid from the Central Government, it continued to be affiliated to a state university and therefore, did not fulfil the conditions envisaged under Clause (iv) of Section 2(d) of the CEI Act. By placing reliance on *V. Anto* (supra) and *Ram Awtar Manda (Supra)* it has been urged that unless both the conditions of receiving aid and affiliation with a central university are fulfilled, the institute cannot be treated as Central Educational Institution. In order to appreciate this plea, Section 2(d) of the CEI Act, 2006 may be noted and the same reads as under:

- "2(d) "Central Educational Institution" means—*
- (i) a university established or incorporated by or under a Central Act;*
 - (ii) an institution of national importance set up by an Act of Parliament;*
 - (iii) an institution, declared as a deemed University under section 3 of the University Grants Commission Act, 1956 (3 of 1956) and maintained by or receiving aid from the Central Government;*
 - (iv) an institution maintained by or receiving aid from the Central Government, whether directly or indirectly, and affiliated to an institution referred to in clause (i) or clause (ii), or a constituent unit of an institution referred to in clause (iii);*

(v) an educational institution set up by the Central Government under the Societies Registration Act, 1860 (21 of 1860)".

33. In my view, once it is an admitted position that *VMMC & SJH, ABVIMS & RML, ESIC, Basaidarapur* continue to be affiliated to respondent no. 2, a state university, the petitioners are justified in contending that the same cannot be said to be Central Educational Institutions (hereinafter referred to as 'CEI') under the CEI Act, 2006. The issue, however, is whether merely because *VMMC & SJH, ABVIMS & RML, ESIC, Basaidarapur* do not qualify as CEI under the CEI Act, which makes it mandatory for the Central Government to provide 27% reservation for OBC candidates, can it denude the Central Government of its power to decide OBC list to use, the Central or the State list? For an answer to this question it would be necessary to examine the objective of the CEI Act, which was conceptualized to ensure provision of a certain percentage of reservation in CEIs. The same reads as under:

"An Act to provide for the reservation in admission of the students belonging to the Scheduled Castes, the Scheduled Tribes and Other Backwards Classes of citizens in certain Central Educational Institutions established, maintained or aided by the Central Government, and for matters connected therewith or incidental thereto."

Upon a perusal of the aforesaid, it is evident that the CEI Act merely provides for a mandatory reservation in the central educational institutes and does not in any manner envisage interference with the constitutional power of the Central Government to make reservations for admissions to any institute. The answer therefore, to the question hereinabove has to be a clear 'NO'. Merely because institutes such as *VMMC* and *ABVIMS* do not fall under the ambit

of the term ‘*central educational institutions*’ as defined in 2 (d) cannot imply that the central government does not have the power to provide for reservations in these institutes. Similarly, it cannot be said that the central government does not have the power to prescribe that only the central OBC list would be applicable in these institutes. In this regard, reference may be made to the observations of the Apex Court in Paragraph 41 of its decision in *Neil Aurelio Nunes and others* (supra), wherein the Court dealt with the constitutional power of the State to make reservations in educational institutions. The same reads as under:-

“41. The Constitution enables the State to make special provisions for the advancement of socially and educationally backward classes for admission to educational institutions at both the UG and PG levels. While on certain occasions, this Court has remarked that there cannot be any reservation in SS courses, this Court has never held that reservations in medical PG courses are impermissible. In Pradeep Jain (supra), this Court did not hold that reservation in PG courses is altogether impermissible. In Dr. Preeti Srivastava (supra), this Court was not concerned with the issue of reservation in PG courses; rather it was concerned with the question whether it is permissible to prescribe a lower minimum percentage of qualifying marks for reserved category candidates in comparison to the general category candidates. In AIIMS Student Union v. AIIMS, this Court was concerned with the question of reservation based on institutional preference in PG courses and held that limited preference to students of the same institution can be given at the PG level. In Saurabh Chaudhri v. Union of India, a Constitution Bench of this Court observed that reservation in PG courses to a reasonable extent did not violate the equality clause. Mr. Divan had urged on behalf of the petitioners that for many individuals PG is the end of the road and therefore, the PG courses should be equated with SS courses and no reservation should be allowed in PG. We find it difficult to accept this argument

when this Court has time and again permitted reservation in PG courses. This argument merely seeks to create an artificial distinction between the courses offered at the PG level. Further, only certain medical fields do not have SS courses and on the basis of that we cannot deem that reservation is impermissible in PG as a whole. Crucially, the issue here is whether after graduation, an individual is entitled to reservation on the ground that they belong to a class that suffers from social and educational backwardness. In our opinion, it cannot be said that the impact of backwardness simply disappears because a candidate has a graduate qualification. Indeed, a graduate qualification may provide certain social and economic mobility, but that by itself does not create parity between forward classes and backward classes. In any event, there cannot be an assertion of over-inclusion where undeserving candidates are said to be benefitting from reservation because OBC candidates who fall in the creamy layer are excluded from taking the benefit of reservation. Thus, we find that there is no prohibition in introducing reservation for socially and educationally backward classes (or the OBCs) in PG courses”.

34. In the present case, both the institutions in question, have all along been described as Central Institutes both by the respondent no. 1 and respondent no. 2, this was made clear as early as on 10.06.2021 when the respondent no. 2 issued its Information Bulletin, and was reiterated in the Information Brochure issued by respondent no.1 on 03.10.2021. It is also undisputed that these institutes are funded and maintained by the Central Government. In my view, this position that in all Central Institutions, admissions against seats reserved for the OBC was meant to be only for those in the Central OBC list was, therefore, crystal clear to everyone right from the beginning. Moreover, all the candidates were also well aware that in all central institutes including the *VMMC & SJH, ABVIMS & RML, ESIC, BASAIDARAPUR*, it was only the central OBC list which was being followed

for Under Graduate courses from NEET-PG 2020 itself. At the same time, it cannot be denied that FAQ no. 50 as initially notified on 03.10.2021, and thereafter, on 10.01.2022 sought to convey otherwise. Undoubtedly, the impression sought to be given was that the admission against OBC seats in the institutional preference seats would be as per the Delhi OBC list; this was however, changed on 12.01.2022. While the respondent no. 1 claims it was a mistake which was corrected, the petitioners contend otherwise. The changes in FAQ no. 50 are mentioned hereinbelow:

<i>NEET-PG Information Bulletin & Counselling Scheme on Respondent No.1's website before 13.1.2022</i>	<i>NEET-PG Information Bulletin & Counselling Scheme on Respondent No.1's website on 13.1.2022</i>
<p><i>Q. No. 50: What is the criteria for OBC reservation in Central Institutes of IP University?</i></p> <p><i>Ans: There will be provision for OBC candidates of state quota of IP University to exercise their right of OBC reservation in IP University seats while they will be treated as UR (General Category) in All India Quota.</i></p>	<p><i>Q. No. 50: What is the criteria for OBC reservation in Central Institutes of IP University?</i></p> <p><i>Ans: The rules of Central Institutes/University and the OBC list as per Central Rules will apply.</i></p>

35. Though, the petitioners are justified in urging that they were misled by answer to FAQ no. 50, which was changed only on 12.01.2022 to exclude them, the fact remains that all other clauses, of both the brochure of respondent no. 1, and the Information Bulletin of respondent no. 2 clearly indicated that in these two institutes, described as Central Institutes, it was the Central OBC List which would be applicable, both for the AIQ and

Institutional seats. The brochure and bulletin have to be read as a whole and compositely; merely because there was an error in the answer to one of the many FAQs, which error too was amended before the petitioners were to undertake their choice filling, cannot unfortunately, come to their aid.

36. In fact since, the respondent no.1 has also not seriously disputed the position that some last minute changes were introduced in its brochure, and therefore the petitioners are justified in urging that the position that candidates in Delhi OBC list will not be eligible even for the institutional quota seats of respondent no. 2 became clear only on 12.01.2022. This clarification was, however, issued before the petitioners were asked to exercise their choices on 13.01.2022 and not after counselling had commenced, as was sought to be urged by Mr. Venugopal.

37. Thus, despite some clarifications having been issued by the respondent no. 1 at the last minute, I am of the considered view, that upon a holistic reading of the Bulletin issued by respondent no.1 and the Brochure issued by respondent no.2, it is apparent that the respondents' intention to rely only on the Central OBC list for reservation even for institutional preference seats, was made abundantly clear from day one itself. It can therefore, not be said that there was any change in the '*rules of the game*' after it had begun. At best, it was a case where a clarification was issued belatedly, yet the same was also issued before the counselling was to begin on 13.01.2022. This, when viewed together with the fact that all the candidates including the petitioners, were given an option to change to the Un-Reserved Category, which option they admittedly exercised, leads to only one conclusion, that neither were the petitioners taken by surprise nor has any prejudice been caused to them on account of the impugned notification. Moreover, the petitioners' alternative prayer that they be given an opportunity to apply in

the Un-Reserved category has already been granted and about 1,200 similarly situated candidates have exercised this option; in fact, a number of petitioners' have been allotted seats in the Un-Reserved category and therefore, on this count also the petition is liable to be rejected.

38. In my considered opinion, the decision of this Court in *Ankita Choudhary (supra)* upon which the petitioners have placed heavy reliance to contend that the 'rules of the game' cannot be changed after the select list is published is, not applicable to the facts of the present case; in that case, a policy change to exclude central categories was brought in at the last minute. In the present case, there is no last minute change but only a last minute clarification of an inadvertent error. The petitioners have also not denied that this policy to use only the Central OBC list for admission to the Under Graduate courses in these two institutes has been in vogue since the last academic year. This decision is therefore clearly distinguishable and does not forward the case of the petitioners.

39. For the reasons stated hereinabove, I do not deem it necessary to deal with the submissions of the respondent that granting the relief sought in the present petition would result indirectly in reservations based on the domicile of candidates, which, it has been contended is not permissible in view of the various decisions of the Apex Court.

40. For the reasons stated above, the writ petition is dismissed with no orders as to costs.

(REKHA PALLI)
JUDGE

FEBURARY 15, 2022

sr/acm